

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



United States Court of Appeals  
for the District of Columbia Circuit

FILED APR 16 1965

*Nathan J. Paulson*  
CLERK

JOINT APPENDIX

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**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 19,146

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LOCAL 349, INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, AFL-CIO,

v.

NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*  
*Respondent.*

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On Petition for Review and  
On Cross-Petition for Enforcement of an Order of  
The National Labor Relations Board

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**v.**

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AND ON CROSS-PETITION FOR ENFORCEMENT OF AN ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD**

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**JOINT APPENDIX**

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## INDEX

	<u>Page</u>
Prehearing Conference Stipulation, dated February 5, 1965 and February 9, 1965 . . . . .	1
Prehearing Order, Dated February 19, 1965 . . . . .	2
Intermediate Report, dated August 21, 1963, before the National Labor Relations Board, Division of Trial Examiners, Washington, D. C. -- Case No. 12-CC-258 . . . . .	3
Appendix -- Notice to All Members of Local 349 . . . . .	56
Respondent Local Union 349, International Brotherhood of Electrical Workers, AFL-CIO, Exceptions to Trial Examiner's Report, and Brief in Support of Exceptions, dated September 27, 1963 . . . . .	57
Decision and Order, Released November 7, 1964 . . . . .	65
Order . . . . .	78
Notice to All Members of Local 349 . . . . .	81
General Counsel Exhibits:	
Exhibit 1(e) Answer of Local 349, International Brotherhood of Electrical Workers, AFL-CIO, dated March 22, 1963 . . . . .	82
Exhibit 1(j) -- Response to Respondent's Motion for a Better Bill of Particulars, Dated April 3, 1963 . . . . .	83
Exhibit 1(m) -- Order on Motion for Bill of Particulars and to Strike Parts of the Complaint, Dated April 3, 1963 . . . . .	84
Exhibit 1(n) -- Answer of Local 349, International Brotherhood of Electrical Workers, Dated April 11, 1963 . . . . .	85
Exhibit 1(o) -- Motion of Respondent Local 349, for a Better Bill of Particulars and Motion to Strike, Dated April 11, 1963 . . . . .	86
Exhibit 1(w) -- Answer of Respondent to Second Amendment to Complaint and Notice of Hearing, Dated April 22, 1963 . . . . .	87
Exhibit 1(y) -- Order on Motion to Strike Complaint and for Better Bill of Particulars, Dated April 23, 1963 . . . . .	88

## General Counsel Exhibits (Cont'd.):

Exhibit 1(z) — Response to Trial Examiner's Order for Better Bill of Particulars Dated April 23, 1963; dated at Tampa, Fla., April 24, 1963 . . . . .	89
--	----

Exhibit 3 — Labor Analysis . . . . .	91
--------------------------------------	----

Exhibit 9 — Decision and Order, dated September 5, 1962 . . . . .	92-A
--	------

Appendix A . . . . .	93
----------------------	----

Exhibit 10 — Decree, Entered Oct. 17, 1962 . . . . .	94
--	----

Respondent's Exhibit 1 — Transcript of Proceedings, In the District Court of the United States for the Southern District of Florida, No. 63-115 — Civil- DD, March 7, 1963 . . . . .	95
---	----

Timothy John Sullivan . . . . .	95
Direct . . . . .	98
Cross . . . . .	99
Redirect . . . . .	

Excerpts from Transcript of Proceedings, Before the National Labor Relations Board, Twelfth Region . . . . .	99
---	----

Witnesses:

	<u>Tr.</u>	<u>Page</u>
Luciano de Alfaro . . . . .	19	100
Direct . . . . .		
Richard S. Flink . . . . .	25	100
Direct . . . . .		
Carl Cox . . . . .	33	101
Direct . . . . .		
Wesley M. Sanders . . . . .	40	101
Direct . . . . .		
Enrique Marina . . . . .	46	102
Direct . . . . .		
Shirley Wood . . . . .	64	106
Direct . . . . .		
Kenneth Cutchens . . . . .	89	111
Direct . . . . .		
Harry Burns . . . . .	98	112
Direct . . . . .		

Excerpts from Transcript of Proceedings, Before the  
National Labor Relations Board, Twelfth Region  
(Cont'd.):

<u>Witnesses:</u>	<u>Tr. Page</u>	<u>Page</u>
Robert Herold		
Direct . . . . .	130	113
William Statcavage		
Direct . . . . .	147	115
Continued Direct — April 30, 1963 . . . . .	171	126
Cross . . . . .	179	130
Redirect . . . . .	212	137
R. Edward Wood		
Direct . . . . .	215	138
Timothy Sullivan		
Direct . . . . .	226	140
Cross . . . . .	230	142
Marvin Apt		
Direct . . . . .	245	143
Cross . . . . .	248	144
Neil D. MacMillan, Jr.		
Direct . . . . .	249	144
Cross . . . . .	282	158
Redirect . . . . .	306	161
Albert R. Oliveira		
Direct . . . . .	311	161
Cross . . . . .	321	166
Marvin Apt		
Direct . . . . .	354	168
Richard F. Harrison		
Direct . . . . .	369	173
Cross . . . . .	384	178
Gene Albury		
Direct . . . . .	390	180
Cross . . . . .	394	182
John R. Taylor		
Direct . . . . .	404	184
Cross . . . . .	410	186
By the Trial Examiner . . . . .	419	189

Excerpts from Transcript of Proceedings, Before the  
National Labor Relations Board, Twelfth Region  
(Cont'd.):

Witnesses:

	<u>Tr. Page</u>	<u>Page</u>
Fred Stamp		
Direct . . . . .	421	190
Cross . . . . .	428	194
Arthur Laschower		
Direct . . . . .	438	197
Robert Lee McLain		
Direct . . . . .	451	198
Cross . . . . .	463	204
Emelio Diaz		
Direct . . . . .	472	205
Cross . . . . .	476	208
Harry Disney		
Direct . . . . .	478	209
Cross . . . . .	480	210
Redirect . . . . .	483	211
Dave Finn		
Rebuttal . . . . .	486	211
Cross Examination-Sur-Rebuttal . . . . .	490	213



## JOINT APPENDIX

### IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

LOCAL 349, INTERNATIONAL BROTHERHOOD	:	
OF ELECTRICAL WORKERS, AFL-CIO,	:	
	:	
Petitioner,	:	
	:	
v.	:	No. 19,146
	:	
NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Respondent.	:	

### PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Rules of this Court the parties, subject to the Court's approval, hereby stipulate and agree with respect to the issues and the joint appendix as follows:

#### I STATEMENT OF THE ISSUES PRESENTED

1. Whether the Board properly found that Petitioner violated Section 8(b)(4)(i)(ii)(B) of the Act by inducing work stoppages of its members on the Village Green Crown Lanes Job, the Miami Laundry Job, the Public Warehouse Job, and the Pan American Hospital Job.
2. Whether the Board's Order is valid and proper.

#### II THE JOINT APPENDIX

1. The portions of the record to be printed in a joint appendix shall consist of:
  - a. This prehearing conference stipulation.
  - b. Decision and Order of the Board, including the Intermediate Report of the Trial Examiner.
  - c. Such portions of the typewritten transcript and exhibits in the Board proceeding as each party shall respectively designate.

2. Each party will pay the costs of what it designates; Petitioner bearing the cost of printing items (a) and (b) above. Petitioner will serve its designation on the Board on or before March 15, 1965. The Board will serve its designation on Petitioner on or before March 22, 1965. Petitioner will be responsible for the printing of the joint appendix, and will file and serve it together with its opening brief.

III. It is further agreed that any party in the briefs, and the Court at or following the hearing in the case, may refer to any portion of the original transcript of record or exhibits herein which have not been printed, or otherwise reproduced, it being understood that any portions of the record thus referred to will be printed in a supplemental joint appendix if the Court directs the same to be printed.

Dated at Washington, D. C.  
this 5th day of February, 1965

Dated at Miami Beach, Florida  
this 9th day of February, 1965

/s/ Marcel Mallet-Prevost  
Assistant General Counsel  
National Labor Relations Board

/s/ Seymour A. Gopman  
Counsel for Petitioner

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### PREHEARING ORDER

Before: Washington, Circuit Judge,  
in Chambers.

Counsel for the parties in the above-entitled case having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is approved, and it is

ORDERED that the stipulation shall control further proceedings in this case unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

Dated: February 19, 1965

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IR-394-63  
Miami, Fla.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF TRIAL EXAMINERS  
WASHINGTON, D. C.

LOCAL 349, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL  
WORKERS, AFL-CIO

and

Case No. 12-CC-258

DADE SOUND AND CONTROLS

INTERMEDIATE REPORT

Statement of the Case

On February 7, 1963, Dade Sound and Controls, herein called Dade, filed a charge alleging violations of Section 8(b)(4)(i) and (ii)(B) against Local 349, International Brotherhood of Electrical Workers, AFL-CIO, herein called the Union. On March 15, 1963, and at various succeeding dates the General Counsel issued a complaint and a series of amendments to the complaint alleging violations of Section 8(b)(4)(i) and (ii)(B) of the Act. Respondent has denied the commission of the unfair labor practices alleged.

The case was heard before Trial Examiner Ramey Donovan on April 29-30 and May 1, 1963, in Miami, Florida. The General Counsel and the Respondent were represented by counsel and participated fully in the hearing. Briefs were received on June 13, 1963.

Findings and Conclusionary Findings

I. The business of the Companies involved

Dade is a small firm that installs sound and speaker equipment that is used in intrabuilding communication, for instance, a nurses' call system in a hospital. As far as appears, the officers and employees of Dade are limited to two men, Oliveira and MacMillan. Both of these individuals are technically skilled in their type of work. They are members

of the Communication Workers of America, AFL-CIO, herein called CWA.

The complaint refers to five construction jobs at which the alleged unfair labor practices occurred. All these jobs are in the general Miami area. There is the Village Green Crown Lanes job (Village) which involves the construction of bowling alleys. Richard S. Flink, Inc., was the general contractor for the construction of the bowling alleys. The electrical subcontractor was Burns & Yaeger. Village contracted certain sound and communication work to J. M. Coker, Inc., and Coker awarded the installation work on its contract to Dade. The Miami Laundry and Dry Cleaning Co. job involves the renovation and construction of a laundry building. M. R. Harrison Construction Co. was the general contractor. The electrical subcontractor was R. L. O'Donovan. Miami Laundry gave the sound and communication work to Coker and the latter gave the installation work on its contract to Dade. The Lincoln National Life Building project entailed the construction of an office building. Arkin Construction Co., Inc., was the general contractor. The electrical subcontractor was Kammer & Wood, Inc. Lincoln National awarded the sound and communication work to Electronic Wholesalers, Inc., which in turn awarded certain installation work in its contract to Dade. The fourth job was the construction of a warehouse for Publix Markets, Inc. Carl Kovens Construction Corporation is the general contractor on the Publix job. Kammer & Wood is the electrical contractor on the job and the sound and communication work was given to Coker by Publix. Coker in turn gave certain installation work on its contract to Dade. The last of the projects that concern us is the construction of a hospital building for Pan American Hospital. Fryd Construction Corporation was the general contractor. The electrical subcontractor was Kammer & Wood. Pan American gave the sound and communication work to Coker which in turn gave the installation work on the sound and communication equipment to Dade.

The General Counsel in his brief bases jurisdiction upon a total of the inflow of the secondary employers at the five aforementioned



construction projects.<sup>1/</sup> The total inflow, as found in the record, is: Dade -- \$1,600; O'Donovan -- \$10,310; Kammer & Wood -- \$14,935; Electronic Wholesalers -- \$1,512; Coker -- \$24,527, for a total of \$52,884. The Madison case, cited by the General Counsel, supports the proposition that the operations of secondary employers on separate projects warrant the assertion of jurisdiction when the combined total of all such operations exceeds \$50,000.<sup>2/</sup>

There are over 25 contractors and subcontractors named in the complaint. In addition to his basic jurisdictional position aforescribed, the General Counsel adduced evidence from some of these employers that in some instances offered additional grounds for asserting jurisdiction. On the Village bowling alley job, according to General Contractor Flink, the pinsetters were secured from Brunswick in Michigan and were 60 in number, costing "half a million dollars a piece."<sup>3/</sup> Sheffield Steel Products secured steel plates, joists, and beams in an amount of \$200,000 from outside the State for the Publix job. Fuel Oil Equipment Company furnished \$9,936 worth of materials from outside the State to the Pan American job. McDonald Air Conditioning furnished equipment and materials totaling approximately \$47,829 from outside the State to the Lincoln National job. Virginia Steel Division of Bethlehem Steel Corporation furnished steel products from outside the State totaling \$4,756, to the Lincoln National job and \$3,525 to the Miami Laundry job.

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<sup>1/</sup> The Respondent contests jurisdiction.

<sup>2/</sup> Madison Building & Construction Trades Council (H. K. Lathing Co.), 134 NLRB 517. The true antecedent of Madison appears to be Commission House Drivers, etc. (Euclid Foods, Incorporated), 118 NLRB 130, although not cited in the Madison case. See International Brotherhood of Teamsters, etc. (McAllister Transfer Inc.), 110 NLRB 1769. Cf. Truck Drivers Local Union No. 649, International Brotherhood of Teamsters, etc. (Jamestown Exchange, Inc.), 93 NLRB 386.

<sup>3/</sup> The transcript of testimony so reads. Since \$30 million appears to be a very high figure for pinsetters it is possible that there was an error in transcription. However, even if the figure is reduced to \$50,000 per pinsetter, the total for 60 would be \$3 million.

On all the evidence and on the authority of the cases cited, it is found that the combined indirect inflow of the four secondary employers (O'Donovan, Kammer, Electronic and Coker), exceeds \$50,000 and thus meets the Board's jurisdictional standard.<sup>4/</sup>

## II. The labor organizations involved

The Respondent and CWA are labor organizations within the meaning of the Act.

## III. The alleged unfair labor practices

### a. Background

The General Counsel introduced into evidence a prior Board Decision and Order against Respondent, dated September 5, 1962, and a decree by the Court of Appeals, Fifth Circuit, enforcing such Order, dated October 17, 1962.<sup>5/</sup> This Decision, Order and Decree were entered into pursuant to a settlement agreement with the Respondent. The Trial Examiner has been requested to take administrative notice of this prior proceeding. It is pointed out by the General Counsel that in the prior case, "Respondent solemnly undertook to cease and desist from secondary conduct for the purpose of destroying Dade Sound in the future. The record evidence in this proceeding [the instant case] shows that this solemn undertaking by Respondent has not been fulfilled." In view of

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<sup>4/</sup> The business of Dade when added to the total would increase the amount.

<sup>5/</sup> The Order directs Respondent to cease and desist from:

In any manner or by any means engaging in, or inducing or encouraging any individual employed by M. R. Harrison Construction Corporation, Miller Electric Co., J. M. Coker [Harrison and Coker are also involved in the instant case as contractors] or by any other person engage in commerce . . . to engage in a strike or a refusal . . . to use, manufacture, process, transport, or otherwise handle or work on any goods, materials or commodities, or to perform any services, or in any manner or by any means threatening, coercing, or restraining [Harrison, Miller, Coker] or any other person engaged in commerce . . . where in either case an object is to force or require [Harrison, Miller, Coker] or any other person engaged in commerce . . . to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, Dade Sound and Controls.

the terms and scope of the outstanding court decree enforcing the Board's Order, and the proximity of time, the question arises why the General Counsel did not proceed against Respondent in contempt if the evidence presented in the instant case shows, as the General Counsel contends, that Respondent has not ceased its illegal "secondary conduct for the purpose of destroying Dade Sound . . ." The General Counsel, in effect, is saying that Respondent by the conduct described in the instant complaint is violating the Order of the Board and the decree of the court but that the matter is being dealt with by issuing the instant complaint and hopefully securing another Board Order and court decree. I have some trouble in following this approach. If the allegations of the instant complaint are sustained by the record, it is difficult to understand why the prior Board Order and court decree are not being violated and the General Counsel has, indeed, stated that this is the fact.<sup>6/</sup> At some point, the time consuming processes of the Board should be brought to a head and if violation of a Board Order and court decree is not the appropriate circumstance then we are simply engaged in an endless and futile series of issuing complaints, conducting hearings, and issuing reports, decisions, orders, and securing decrees.

The General Counsel states that "the Board's prior Decision and Order against this Respondent must be evaluated by this Trial Examiner as the agent of an administrative agency experienced in labor relations problems." Other than the evaluation previously expressed I find little to evaluate. The Decision and Order were made pursuant to a settlement agreement. Additionally, the Decision contains no findings of fact other than on jurisdiction and on the fact that the Respondent is a labor organization. The Decision then concludes with an order, previously described.

More helpful background is furnished by witness Finn, director of Local 3107, CWA. He testified that his union had signed a contract with

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<sup>6/</sup> By the same token, if there has been no violation of the decree, the basis for the issuance of the complaint presents itself.

Dade in December 1961 and that MacMillan and Oliveira of Dade were dues-paying members of CWA. Sometime in 1962, MacMillan had informed Finn that he was having trouble with Respondent about MacMillan working on a job. At a later date, apparently in 1962 also, a conversation took place between Finn and Apte, a business agent for Local 349, IBEW.<sup>7/</sup> Apte asked Finn what he was "going to do with the sound men, was I[Finn] going to pull them off the job."<sup>8/</sup> Finn replied that he would not pull the CWA men off the job and that they had the right to work on the job. Apte then said that, if Finn did not remove the CWA men, "his [Apte's] men would be walking" [walking off the job and not working.] Finn adhered to his position. Apte accused CWA of raiding IBEW and Finn denied that.

On direct examination by Respondent's counsel, Apte was asked in general and without reference to any dealings with Finn, "Does the union or has the union [Local 349, IBEW] ever taken any position about the men working or not working with MacMillan. A. No, Sir." Following this examination, Apte was asked whether any position had been taken about the men working or not working with Dade Sound. He again replied, no. Upon further questioning, the witness admitted that when Dade was working on the Miami laundry job he spoke to Mathes, president of Local 3107, CWA. Apte, when asked whether Mathes had not referred him to Finn, said that Mathes did refer him to another man whose name he could not recall. Apte said that he spoke to this other man.

Q. And didn't you tell him the work that was being done by Don MacMillan was under IBEW jurisdiction?

A. I am very sorry, but I don't recall that conversation at all.

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<sup>7/</sup> Apte had spoken to Mathes, president of Local 3107, before speaking to Finn.

<sup>8/</sup> In the context of the record in this case where Dade was generally referred to by witnesses as Dade Sound and where workers, such as MacMillan, Oliveira, and men in the IBEW who were skilled in sound and communication work, were referred to as "sound" men, I find that Apte in his conversation with Finn was referring to MacMillan or Oliveira or both when he spoke to him about the "sound men."



The witness said that the reason he spoke to Mathes and the other man was because "there was some problems on the job, at that time, and the [IBEW] men were trying to walk off the job . . ." and Apte had never heard of Dade Sound but Mathes of CWA had been mentioned and that Apte's call "had to do with the [IBEW] men wanting to leave . . ." Apte said that after speaking to Mathes he told the men to return to work and they did. He was then asked:

Q. Was this before or after the charge was filed, that they should go back to work?

A. That was right at that time.<sup>9/</sup>

The evidence persuades me that around May 1962, Apte spoke to Finn as described by the latter in his testimony. As an agent of the Union, Apte expressed strong opposition to CWA men, Dade Sound, performing sound and communication work on a construction job, and accused the CWA of encroaching upon and raiding work claimed by Local 349, IBEW, to be within its jurisdiction. Apte informed Finn that if the CWA men were not removed the Local 349 men would not work. On this particular job in that period and subsequent to Apte's statements to Finn aforescribed, the Local 349 men continued to work. According to Apte, 349 men continued to work because he told them to do so and apparently this is the fact. Implicit in this aspect is a manifestation of Local 349's control over its members. The members worked when so advised or directed by the business agent and, presumably, the opposite is true, they will not work if so directed. As to why Apte advised the members to work on that occasion, there is some indication that the filing of the prior charge

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<sup>9/</sup> The charge in the prior case, previously referred to, was filed in May 1962. Finn, in the instant case, testified, on May 1, 1963, that the conversation with Apte, aforescribed, occurred about a year ago. Apte testified, on the same date, May 1, 1963, that his conversation with Mathes and another man, to whom Mathes referred him on the matter of Dade Sound, took place about a year ago. One of the reasons Apte gave for not recalling a conversation with Finn was, "Well, that's been approximately one year ago, hasn't it."

"at that time" may have been a factor. But whatever the motivation for not implementing, at that time, the statement previously made by Apte to Finn, Apte never repudiated, to Finn, Apte's position regarding the Dade CWA men nor his warning about the Local 349 men not working.<sup>10/</sup>

b. The Village Green Crown Lanes job

Village gave Coker a contract to install a paging system and an intercommunication system on its bowling alley construction job. Coker contracted with Dade for the latter to perform some of the installation work on the aforementioned systems. Burns & Yaeger (Burns) was the electrical subcontractor on the job.<sup>11/</sup> Burns employed Local 349, IBEW electricians, and Burns and Yaeger, personally and as individuals, were members of the same union.

Statcavage, a representative and employee of Coker, testified that he went to the Village jobsite on July 27, 1962, with MacMillan of Dade for the purpose of making certain work estimates regarding the Coker and Dade work.<sup>12/</sup> This was the first time that Statcavage came on the job with someone from Dade. Statcavage was acquainted with Logan, who

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<sup>10/</sup> Evidence of disposition and motivation still exists and merits consideration in the following circumstances: A says to B, I am going to beat you unless you do so-and-so. B does not do so-and-so. A does nothing at the time although he sees B on several subsequent occasions. Perhaps A did not mean what he had said or perhaps there were too many people around when he saw B or perhaps the local authorities were conducting an investigation of various other alleged breaches of the peace during the period in question. Some months later, B is found in a battered condition. No witness saw the battery. A's guilt or innocence would be properly considered in the light of his prior statement, together with all other evidence in the case.

<sup>11/</sup> Flink was the general contractor.

<sup>12/</sup> Events in July 1962, like those in May 1962, are considered as background since they occurred more than 6 months prior to the filing of the charge.

was the electrical foreman on that job for Burns.<sup>13/</sup> In a conversation between Statcavage and Logan on this occasion, Statcavage introduced MacMillan to Logan. The latter asked if MacMillan was the man who was going to do the installation work. Statcavage said, yes. Logan asked if MacMillan was a 349 man and MacMillan replied, no, but he was a CWA cardholder. Logan said that there might be "some difficulty" and "I don't know if this is going to work out." Logan then went over to

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<sup>13/</sup> Logan was a member of 349. He was appointed as foreman by Burns on the Village job. Logan, like the other journeymen members of 349, worked for various employers as work was available. On one job the 349 man might simply work as a journeyman electrician; on the next job he might be the foreman; on some jobs where the journeyman was working he might also be the union steward. The journeyman, whether designated as foreman or not, performed journeyman's work and as foreman was a working foreman. The foreman is hourly paid and his rate, like that of the journeyman, is fixed contractually in the union agreement as the result of negotiation carried on by the Union on behalf of all its members. The foreman's hourly rate is higher than that of a journeyman, perhaps about 25 cents an hour higher in most instances. When acting as foreman the electrician sees to it that the other electricians perform their work; he signs for electrical supplies and equipment delivered to the electrical segment of the construction work; he reads and consults blueprints in order that the work may be done accordingly; he possesses disciplinary power over the electricians working under him and he generally is responsible for the satisfactory performance of the work that the electrical contractor has undertaken to perform. These working foremen have a dual loyalty, part to the immediate employer for whom they are working on a particular job, and part to their union. As far as the foreman and the other members of the Union are concerned, the Union is the source of their jobs. They may work for an employer for a few days, weeks, or longer, either as a foreman or as a journeyman. They obtain their jobs through the Union. When one job is completed, it is the Union that refers them to another job. The Union is not only the source of jobs but it negotiates the wages for the foreman and the others. As the record in this case shows, the foreman acts like any other union member on matters of union work jurisdiction and in such circumstances his responses as a union member and his conduct as a union member outweigh any obligation to the employer. On none of the jobs did the foreman (or any of the electricians for that matter) have any dispute with his own employer, the electrical contractor. However, the foreman walked off the job as readily as any other members of the Union and in no instance did he remonstrate with the strikers or seek to keep them working for their employer, who was also employing him as a foreman.

McLain,<sup>14/</sup> the Local 349 job steward, who was working nearby. Logan and McLain came back to Statcavage and MacMillan. When McLain was apprised that MacMillan was the man Statcavage had selected to perform the Coker work, McLain said, "he [MacMillan] just can't work out." Statcavage asked if anything could be done about checking the matter further. McLain walked away and went to the telephone which was in sight but out of earshot. When, after a time, Statcavage observed McLain hang up the telephone, he asked him what the "scoop" was or what the story was. McLain replied, "You'll find out" and walked away. Statcavage and MacMillan went about their work of checking locations of outlet boxes and conduits and estimating regarding the installation of the sound equipment, which of course necessitated a consideration of the location of other electrical connections. In the course of doing this work, Statcavage and MacMillan were talking with Adams, the job superintendent, about the location of a closed circuit television camera.<sup>15/</sup> Logan came up and said the electricians are walking off the job, "we have to leave" and he turned around and left; or, Logan said, the electricians are leaving the job and that he had to go also and he walked away.<sup>16/</sup> Burns, of Burns & Yaeger, testified that he had 10 electricians working on July 27, 1962, and that

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<sup>14/</sup> Thus spelled in the transcript of hearing. Since both the General Counsel and Respondent's counsel in their briefs spell the name as McClain, the latter may be the correct spelling, but in the absence of a correction the transcript spelling will be followed.

<sup>15/</sup> Statcavage described Adams as job superintendent. MacMillan referred to him as superintendent of construction. The record does not show by whom Adams was employed. The three possibilities, in view of his title, appear to be that he worked for Village or Flink or possibly Burns. I believe it more likely that Adams was employed by either Flink, the general contractor, or by Village, the owner of the project.

<sup>16/</sup> Both Statcavage and MacMillan testified regarding the Village job incidents and their testimony is substantially mutually corroborative.



they were supposed to work a full day. Of the 10, however, all worked only 5 hours, with the exception of an individual named Reeves who worked 5 1/2 hours.

Statcavage testified that as a representative of Coker he subsequently awarded the installation work to Burns & Yaeger (instead of Dade) as a result of the aforementioned difficulty. In the first part of August 1962, Statcavage testified that he asked McLain why he would not work with the Dade people. McLain said that whatever he did, if he felt like walking off a job, it was personal and "if I feel like walking off the job I'll walk off the job and the other men will just follow suit."

After Statcavage had given the work to Burns, that firm performed a portion of the work. Later, because costs were moving higher than anticipated, Statcavage again awarded the work to Dade.<sup>17/</sup> On September 13, 1962, Statcavage, MacMillan, and Oliveira came to the job shortly before noon. Logan came up to Statcavage and asked if "they", MacMillan and Oliveira, were coming on the job. Statcavage said they were. Logan said, "Well, I will have to leave because I have two strikes against me now and I can't afford anything like this." A few minutes later at noon, Statcavage, MacMillan and Oliveira ate lunch on the jobsite. No electricians worked the balance of the day or the next day which was Friday, September 14.<sup>18/</sup>

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<sup>17/</sup> Statcavage himself provided personal general supervision of the work when performed either by the Burns people or the Dade people.

<sup>18/</sup> Burns was asked regarding September 13, 1962, "were you supposed to have employees on the job on that day? A. Yes, Sir, I will say this, that there was work there for them." He also said that "there would have been work there for them" on September 14 but no one worked. Burns' records indicated that Logan had been on the job on September 13 but the hearing record does not show how many hours Logan worked. Statcavage testified that the electricians left the job after lunch on September 13. He said that he did not see Logan actually leave "but I know they weren't there the rest of the day." MacMillan testified that after lunch on the 13th he saw no electricians working on the job nor did he see any on the 14th.

Logan was not called as a witness at the hearing. Albury, one of Local 349's business agents,<sup>19/</sup> testified that he considered "sound" installation (the type of work performed by the Dade people)<sup>20/</sup> part of 349's jurisdiction. The witness stated that he was familiar with a 349 bylaw which provides that one of the duties of a steward was to report any encroachment upon the jurisdiction of the Local. Albury stated that he had had one telephone conversation with Steward McLain regarding the bowling alley job (Village). The steward called him one morning, shortly after 8 o'clock, sometime around the end of the year. Albury knew that McLain was the job steward and that he was working for Burns. When McLain telephoned he simply said, according to Albury, that there were some non-union men working and he wanted another job. Albury states that he told McLain that the "best thing" was for him to go out on the job and that, if he did not, he Albury, would have to replace him. Because McLain did not come to the Local's office, Albury testified that he concluded that McLain went back to work. Albury also said that he was unaware of any work stoppage since McLain told him of none and the contractor did not report one. Other than as stated above, Albury asserts that he had no information about the job and he did not ask McLain who the nonunion men were or what type of work they were doing. With respect to a question whether he was familiar with a 349 bylaw that provides that "in the case of any trouble on the job its shop steward shall immediately notify the business manager," Albury stated that, because a man wants to quit a job or because there is a work stoppage, this was not trouble, "not as far as I am concerned." He also stated that 349 had no rule or policy with reference to working with nonunion people or with CWA or Dade.

McLain testified that when he was employed on the Village job in the period July-September 1962, his employer, Burns & Yaeger, had

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<sup>19/</sup> Callahan is the head business agent or business manager. Apte and Albury are also business agents or assistant business agents.

<sup>20/</sup> Local 349 has some members who are also qualified to perform this type of work.

initially indicated that they had the "sound" as well as the other electrical work. At McLain's suggestion, Burns, who apparently had a "sound" man elsewhere in their employ, arranged to send that man to the Village job. McLain himself then, "I asked one of the others [another employer] to send me one [a "sound" man] and [so that] when the sound work came up [when the electrical and other work had reached a point at Village where it was appropriate to begin making the installing of the sound equipment] I'd have several sound men to do the job . . ." The taking of the foregoing steps by McLain is reasonably attributed to the fact that as steward he was an important man on the electrical phase of the job and he took the steps calculated to protect the Union's jurisdiction over all work that it claimed.<sup>21/</sup>

As steward, McLain was the representative of 349 on the job and his testimony, above, that he did thus and so in order that "I'd [I would] have several sound men to do the job" is to be understood as descriptive of his representative function. The witness also testified that as steward he kept the payroll time of the electricians on the job. This, of course, is a key factor in the pay of the men working on the job, including right to overtime pay and so forth.<sup>22/</sup>

Although McLain was not precise as to dates, he recalled the incident, which, from evidence previously described herein, occurred on July 27, 1962, at the Village job. He recalled that Logan had come over to him and had brought him back to where MacMillan and the others were; he also said that when MacMillan asked about his attitude toward MacMillan working, he told him, "you will find out" and he left the job shortly after that.

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<sup>21/</sup> McLain had never worked for Burns & Yaeger before and his assumption of responsibility on the matter of sound personnel cannot be attributed to any personal relationship with the contractor.

<sup>22/</sup> McLain said that Logan, the foreman, also kept the time "but I keep the time primarily." According to the witness, it is through his time records that "the hall" [the union officials, the union office] can "find out when a man was present or not present [on the job]."

McLain admitted that he knew who MacMillan was when he saw him on July 27. This was because McLain, as well as other 349 men, had, according to McLain, walked off a prior job where they were working for Miller Electric. This prior walkout was due to MacMillan's presence on that job. McLain said that there was some kind of a court proceeding in that matter and that he went back to work about a week later when the trouble had been "ironed out."<sup>23/</sup> On that job, McLain at no time worked while MacMillan was on the job.

After leaving the Village job on July 27, McLain states that he called the hall for the first time on the following morning. He spoke to Albury whom he knew personally and whom he described as a good friend of his. The witness states that the only information he gave Albury was that there were some nonunion men on the job and that he wanted another job. Albury asked him to go back to the job. As he was driving to the job after talking to Albury, McLain states that he passed a restaurant. There were four or five of the Burns 349 electricians there. Albury could not recall whether Logan was in the group. The men asked McLain where he was going or what he was doing. He said that he was going back to work and later on, on that day, these other 349 men returned to work.<sup>24/</sup>

In the period after the return to work at Village in July 1962, McLain admitted that he might have said something to Statcavage but he could not recall what it was. When asked specifically, he said that he did not recall telling him that if he, McLain, left the job the other men would also leave. He said he had told Burns that if "these people" [MacMillan and Oliveira] worked on the job he would leave as he had done

<sup>23/</sup> Miller Electric is one of the employers referred to in the complaint in the prior case and in the Board's Decision and Order. There were legal proceedings in that case and I assume, from the circumstances, that the "ironing out" referred to these.

<sup>24/</sup> McLain testified that he had not told any of the men to leave the job on July 27. He stated that he left the job because it was one of his principles not to work with a nonunion, non-AFL-CIO cardholder. In his testimony he used these terms interchangeably and equated them. He testified that he placed MacMillan, whom he knew held a CWA card, in the afore-described category.



"the other day" [July 27] "and the other [349] men, I don't know for sure . . ."

McLain recalled that there was another occasion when he again walked off the Village job because of MacMillan's return to work. The witness on direct examination referred to a second call he made to Albury, asking for another assignment and Albury said, "Well, I will have to replace you." On cross-examination McLain thought that there was only one occasion when he spoke to Albury. The latter also had testified to only one such call and his testimony on this aspect is credited. Again, on cross-examination, McLain stated that when he left the job the second time he could not recall whether anybody instructed him to go back or not.

A careful consideration of the witnesses and their testimony persuades me that the description of events by Statcavage and MacMillan, heretofore set forth, is accurate and credible and I so find. Further conclusions are set forth in a later section of this Report under that heading.

#### c. The Miami Laundry job

As we have seen, O'Donovan was the electrical subcontractor on the laundry job and Coker had received the sound contract directly from Miami Laundry. Coker, in turn, subcontracted the labor on its contract to Dade. In the last part of September 1962, Statcavage, of Coker, came to the jobsite with MacMillan.<sup>25/</sup> Statcavage spoke to Diaz, a 349 member, who was working on the job as O'Donovan's foreman. Statcavage said he would like to have Dade perform the installation of his sound equipment on that job. Diaz said that the electricians would discuss this among themselves and in a few days would let Statcavage know whether Dade could make the installation. About a week later there was another conversation on the jobsite. Present were Statcavage, MacMillan, Diaz and Disney, the 349 job steward. Statcavage asked what the decision was. Disney replied that he could not work with Dade "and that they [Local 349] had their own people and if Dade . . . came on the job that there

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<sup>25/</sup> The testimony of Statcavage and MacMillan is in substantial agreement.

would be a work stoppage."<sup>26/</sup> MacMillan said that he held a CWA card and pointed out that 349 men did not object to working with the telephone people who were CWA. Disney said there were 349 men who could do the sound work. During this conversation, a 349 journeyman named Fonda, who had experience on sound installations, came up to report to Diaz that he had arrived on the job and that another sound man was on his way from the union hall. Statcavage asked Disney if there would be a work stoppage if the Dade men came on the job and Disney said there would be. Thereupon, on the same day, Statcavage gave the sound installation work to O'Donovan.<sup>27/</sup>

Diaz testified that he recalled that Statcavage and MacMillan came on the job, asked him some questions regarding locations of various electrical outlets and he showed them the locations. Statcavage told Diaz on this occasion that Diaz did not have to worry about MacMillan because MacMillan had a "ticket" [union card]. Diaz testified that he, Diaz, laughed "because I thought he was pulling my leg and I just said, 'fine'" and that was the extent of the conversation. Three or four weeks later, according to Diaz, Statcavage and MacMillan came to the job with Hoskenitch, vice president of Miami Laundry. Hoskenitch asked Diaz if he would work with Statcavage's men on this job and Diaz said, yes, and that Diaz said that he had a responsibility to Hoskenitch to see that his job was completed. Statcavage asked if the other electricians felt the same way and Diaz said that he could not answer for the other men and Statcavage would have to ask them. Diaz states that he also told Statcavage that Diaz' men could not "walk off the job because of the Union." Diaz states that there was an electrician working in the area and he asked Hoskenitch if he would like to ask that man about the matter. Hoskenitch said he would. A little later that day Diaz encountered Hoskenitch again and the latter said the he "would rather not take a chance . . ." and asked

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<sup>26/</sup> Disney's testimony indicates that he had checked the union card of MacMillan.

<sup>27/</sup> O'Donovan employed Local 349 electricians.

Diaz to have O'Donovan put in a bid for the sound work. Statcavage affirmed at that point, according to Diaz, that he also wanted O'Donovan to bid for the sound work.

Disney testified that in September some men came on the job to do the sound work. This was Disney's first "knowledge" of these men but he said that they had spoken to the foreman earlier that morning. Disney states that the aforementioned men, with Hoskenitch, came over to him and asked if Disney would work with them and Disney then asked MacMillan for his union card. MacMillan showed him his CWA card. Disney said he would not work with them. In his testimony, Disney asserts that he had no discussion on this matter with other employees. He states that his employer, O'Donovan, eventually performed the sound work on the job. Disney testified that he checked the union card of the 349 man who came to the job to perform the sound work. He did not know who requested this sound man.

The witnesses in this matter are all interested witnesses and this factor has been taken into account. Respondent's counsel asked Statcavage about the contents of an affidavit which apparently made no reference to conversations to which the witness testified. The examiner did not see the affidavit and it is not in evidence, so it is not easy to evaluate the apparent variation. However, I have given consideration to the aforementioned circumstances adduced by Respondent.

A consideration of the testimony of the witnesses above-mentioned persuades me that the description of two conversations, approximately a week apart, as given by Statcavage and MacMillan, is accurate. The initial effort by Statcavage and MacMillan to secure the consent of the foreman on the jobsite, as well as the effort made with respect to the steward, are consistent with what was done on the other jobs. The problem was, in the first instance, and primarily, one that Statcavage and Dade would seek to work out.<sup>28/</sup> If Hoskenitch entered the picture, it

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<sup>28/</sup> Diaz admittedly laughed and evidently thought that it was funny when Statcavage told him that he, Diaz, would have no problem about working with MacMillan because the latter had a union card.

was, I believe, after the second conversation, although on the same day. It probably represented a last ditch effort to enable Dade to perform its contract. It is likely that what ensued was that Diaz referred Hoskenitch to one of the electricians on the job, most probably Disney, the steward. In any event, it is clear that what Hoskenitch learned confirmed the necessity of having the sound work performed by 349 electricians rather than by Dade if trouble in the form of a stoppage was to be avoided.

d. The Lincoln National Life job

Arkin was the general contractor on the Lincoln National job and Kammer & Wood was the electrical subcontractor. Lincoln National had awarded a contract for the installation of an automatic telephone switchboard to Electronic Wholesalers who in turn subcontracted the installation work to Dade. Herold, a salesman and contact man for Electronic, went to the jobsite around December 11, 1962. He testified that he spoke to Laschower, a 349 electrician who had been appointed electrical foreman on that job by Kammer. Herold told Laschower that Electronic felt that their telephone equipment should be installed by CWA men since they were skilled in that type of work. He asked Laschower if this was satisfactory and the latter said it was. About January 17, 1963, Mahieu and Herold of Electronic went to the jobsite.<sup>29/</sup> With them were Timmerman, an engineer of Tele-Norm, the company that had supplied the telephone equipment to Electronic, and Oliveira of Dade. They had the switchboard with them. This group found Laschower working at the jobsite. When Laschower saw them he said to Herold, "Hey, Buddy, you just threw a f \_\_\_\_\_ into me."<sup>30/</sup> When asked what he meant, and when reminded that the matter had previously been cleared with him, Laschower said "We are supposed to do this work." Laschower said that he had talked with a 349 electrician and had learned that the 349 men had performed this type of work on other jobs. The foreman also stated

<sup>29/</sup> Mahieu was Herold's superior.

<sup>30/</sup> Both Machieu's and Herold's testimony relates to this episode.



that Herold had not told him that it was the Dade people who were going to do the work. He said that he could not work with them because they were nonunion.

Laschower's testimony is that prior to January he admittedly had a conversation with Herold about the installation of the automatic switchboard. Laschower testified, "I asked him if there were men who were going to be qualified to do it, union men, and he said, yes." When the Mahieu, Herold, Oliveira group came to the job in January, Laschower said he was introduced to them and they wanted to unload the switchboard equipment.<sup>31/</sup> Laschower states that he then said that he thought that he should do the unloading. Respondent's counsel thereafter asked the witness whether, after his earlier conversation with Herold, prior to the January 17 incidents, he had learned "anything about these men [Oliveira]."

A. Later, that they were CWA men.

Q. Before you spoke to them, before you wanted to unload the entire board [the switchboard on January 17], did you learn anything about them?

A. Nothing.

Just when or exactly what Laschower claims to have learned about Dade or about CWA men or Oliveira is not clear. But it is fairly clear that Laschower objected to Oliveira performing the work when he and the others came to the job on January 17. A careful consideration of the witnesses and their testimony persuades me that the versions of Mahieu and Herold, heretofore set forth, are substantially credible. It also appears that Laschower had had no earlier problem about working on the job with or claiming the work of CWA telephone men installing a

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<sup>31/</sup> It is not clear how Laschower was introduced to the group or what he claims was said on this score. However, it is reasonable to assume that Oliveira was introduced either by name alone, or he was referred to as Dade, or as a CWA man, or as the man who was going to install the equipment, or as the union man who was going to install the equipment.

switchboard. <sup>32/</sup> I believe that the foregoing is the reason why, when Herold told Laschower in December that he was going to use CWA men to install his equipment, that Laschower agreed that this would be satisfactory. The jurisdictional distinction between CWA men installing a telephone switchboard and other CWA men installing an automatic Tele-Norm telephone switchboard might not be immediately apparent to a 349 electrician and cause him to object on January 17, and reverse a prior acquiescence, unless there was a controlling intervening factor. That factor, the same as in the other jobs in this case, was that Laschower as a Local 349 member regarded Dade as nonunion.

Returning now to January 17, we have seen the initial colloquy between Mahieu, Herold and Laschower. The latter made it clear that he was not going to work with the Dade people and he himself testified that

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<sup>32/</sup> By Respondent's counsel:

Q. . . . January 1963 . . . do you recall any incidents when CWA men came to the job?

A. Yes.

Q. Men you learned were CWA men?

A. Right.

Q. . . . what kind of work were they doing?

A. When they first came there?

Q. Yes.

A. They were putting a telephone switchboard in.

Q. Was this the sound men who later came to the job or just the CWA men or was this the telephone company men?

A. The CWA men were there first, the telephone men were on the job first [putting in a switchboard as aforementioned].

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Q. Did you ever speak to any [telephone] lineman who had checked their cards.

A. Before they came on the job, or after they got on the job?

Q. After they got on the job?

A. The telephone men check in. [Checked them.]

Q. And what did they tell you about that?

A. That they belonged to CWA.

he said that he was going to leave. At this point there is some conflict as to whether Laschower suggested that he call his union hall or whether Mahieu and Herold suggested this action. I believe that the latter is the fact and that Laschower agreed to call the hall and did so.

Laschower and Apte both testified that the former called the hall and spoke to Apte. According to Apte, Laschower told him that there were people on the job doing his work and that he was not going to stay and work with them. Apte said that he had no objection to Laschower not working with the men referred to but that if he left the job and Kammer wanted replacements, Apte would be required to send them. Laschower's testimony is substantially the same.

Mahieu encountered Laschower a few minutes after the latter had called Apte.<sup>33/</sup> Laschower said, "I'm sorry, I can't work." Mahieu asked him if he had called the hall. Laschower said that it has nothing to do with the hall, "it's up to me as to who I want to work with; maybe I will go fishing." Mahieu said that he did not want to cause any labor trouble and that he would lock up the switchboard in the building, take the Dade people off the job at that time, and would call Callahan, the head business agent of Local 349. Mahieu called Callahan, explained the whole situation and problem to him, and said that all he was asking was that, from the engineering standpoint, he wanted the people of his choice to install his equipment. Callahan said that he was meeting with Kammer that afternoon and would talk to him about it. Later that afternoon Mahieu again called Callahan. The latter said that Kammer knew nothing about the matter. Mahieu telephoned Kammer and succeeded in reaching Brush, Kammer's superintendent or general foreman. Upon being told of the problem, Brush asked Mahieu if he could wait a few days since Brush thought that Laschower might complete his (Laschower's) work on the job in a few days. Mahieu expressed concern about the switchboard sitting around. Brush then said that he would pull Laschower off

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<sup>33/</sup> The following testimony of Mahieu is credited. It is substantially uncontroverted.

the job for a short period so that "you can send your man out there to install the switchboard then and then we will work something else out after that." A day or two later Brush sent Laschower to another job in order that the switchboard could be installed by Electronic and Dade.<sup>34/</sup>

On January 21, 1963, MacMillan testified credibly that he came on the job, apparently to do some work in relation to the switchboard. Laschower asked him who he was and MacMillan said he was with Dade. Laschower said, okay, and left. About 15 minutes later, Laschower returned and said that Bob [Herold?] said you have some papers that would let you work on this job. MacMillan said, yes, and Laschower asked to see the papers. MacMillan showed him the Board Order and the District Court injunction or the Court of Appeals decree in the prior case against Local 349. Laschower remarked, "they are kind of outdated, aren't they?" MacMillan said that this was not so.

In the foregoing connection, the credible testimony of Stanley Arkin, the general contractor on the job, is pertinent. Arkin states that in the latter half of January 1963, he was in a room on the jobsite when Laschower made a telephone call. Laschower spoke to someone on the telephone about the installation work of Electronic, for whom MacMillan was working. Laschower asked if the man's [MacMillan's] "papers" were sufficient for him to continue to work on the job. Laschower then left the room, returned, and made another call. The next thing that occurred was that, in the presence of Arkin and MacMillan, Laschower said that he would be leaving the job. Arkin asked, why. Laschower said, in substance, "because he couldn't work with Don [MacMillan] being on the job and it was not because they couldn't recognize his [MacMillan's] union but that he [Laschower] just couldn't work while he was on the job."

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<sup>34/</sup> Laschower testified that, after January 17, ". . . one day I had to go over to Douglas Gardens on a rush job . . . the shop [Kammer & Wood] called me and told me they needed help over there . . . but I went back [to the Lincoln job] the next day." Laschower had a 349 helper with him at National and this man had also gone with him to Douglas Gardens.



Arkin testified that as general contractor he was working under a completion penalty clause and that, if Laschower left, the air-conditioning work would not be completed in time. Laschower was the only electrician on the job at the time and his work was nearly completed but if he left it would hold up the air conditioning. Laschower "was completely familiar with the job . . . and was the only person . . . who has his finger on the sequence of events." A new electrician would have to familiarize himself with the blueprints and the work and delay would be entailed. Arkin testified that he therefore asked Electronic (Herold) to remove MacMillan from the job.<sup>35/</sup>

Laschower testified that he worked on the Lincoln National job with the exception of the 1 day that he had been assigned to work at Douglas Gardens, above mentioned. The witness said that he worked on the job while Oliveira was working. Apparently to explain this later willingness to work with Oliveira (Dade), as contrasted with the Oliveira episode on January 17, and the MacMillan incident on January 21, both of which Laschower had evidently attributed to his personal principles about working with CWA or "nonunion" people, Laschower gave the following explanation: Arkin, the general contractor; Herold of Electronic; and Otte, a representative of Lincoln National, with the position of expeditor of building construction, "they told me they [Dade] would work on nights and weekends and I would work during the day and I would do it [and I had agreed that I would do it]."<sup>36/</sup>

Oliveira testified that the time he worked at Lincoln National while Laschower was also working, was about 3 weeks after January 17, that is, in February 1963. Oliveira states that he worked during the day on that job, that it was 1 full day and part of another that he worked and that Laschower was on the job also. Herold testified that in early February

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<sup>35/</sup> Laschower testified, "I think Stanley [Arkin] told me or told Mr. Herold to tell his men to get out or off the job . . ."

<sup>36/</sup> The implication or meaning of this testimony is that Laschower, consistent with his principles, only worked because the Dade people were not present and working when Laschower worked.

1963, when the Lincoln building was nearing completion, there was a conversation in a small office of that building. Present were Arkin, Otte, Herold, and Laschower. Those present asked Laschower to stay on the job and not walk off while Oliveira or MacMillan completed the telephone system installation work. Laschower said that he could not take a chance on being fined by the Union. Otte or Arkin or both said that if he was fined,<sup>37/</sup> they would pay the fine. After some more conversation along this line, Laschower agreed not to leave the job and to continue with his work.<sup>38/</sup>

A careful consideration of the witnesses, their testimony, and the evidence as a whole, persuades me that Oliveira and Herold testified credibly regarding the above matters. I am satisfied that the findings made heretofore regarding the January 17 and January 21 events, are correct and that the only time that Laschower worked with the Dade people was in February 1963. In view of Laschower's firm position about not working, prior to February, it is evident that for some reason he changed his position in February and did work with Oliveira. Laschower's explanation for the change did not impress me as convincing, in the light of the credited testimony of Oliveira and Herold regarding the true state of affairs.

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<sup>37/</sup> The transcript reads: . . . "[they] said that if he were finished they would pay the fine." Read in context, the word "finished" should be "fined" and the record is hereby so corrected.

<sup>38/</sup> Laschower was asked at the hearing, whether, in a conversation with Arkin, Otte, and Herold, they had not offered to pay any fines inflicted upon Laschower if he continued to work.

A. I don't think they did.

Q. Can you remember?

A. No, I don't think they did.

Q. Did Mr. Otte say anything like that?

A. Not to my recollection.

The witness said he had never been threatened with a fine and that he had never heard of anyone being fined for working with Dade or CWA.

e. The Publix Warehouse job

On the Publix job, Kammer & Wood was the electrical contractor. Publix gave Coker the installation of a public address system and Coker in turn awarded the installation work to Dade. Statcavage, of Coker, MacMillan and Oliveira, of Dade, went to the jobsite on February 4, 1963, to check locations of equipment and perform initial tasks. Stamp, the Local 349 job steward, came up and asked to see the union cards of MacMillan and Oliveira. They produced their CWA cards and after looking at them Stamp walked away. Stamp testified that after looking at the cards he had gone to Goldsmith, construction superintendent for Publix.<sup>39/</sup> Browning, the electrical foreman for Kammer on the job, who was a 349 member, was with Goldsmith at the time. Stamp states that he informed Goldsmith that there were CWA men doing the sound work on the job; that "we" were lead to believe that we would get the work, and that he, Stamp, would not work with the CWA men. Goldsmith said that he would talk the matter over with Statcavage.<sup>40/</sup> Goldsmith, Stamp, and Browning then proceeded to find Statcavage. The two groups met, Statcavage, Oliveira, MacMillan, Goldsmith, Stamp, and Browning. Goldsmith said to Statcavage that he wanted him to hear what Stamp and Browning had to say. Stamp asked Oliveira and MacMillan if they were CWA. They said they were. Stamp said that he could not work with them and if they came on the job he would have to leave. Browning said that he would also leave. After a brief conversation, Statcavage, MacMillan, Stamp and Goldsmith went to find Newsom.<sup>41/</sup> Statcavage explained the situation to

<sup>39/</sup> Stamp had been on the Publix job about a month. He said that Stamp knew him. However, Stamp testified that he did not think that Goldsmith knew that he was the job steward. The Examiner is inclined to believe otherwise since Apte testified that the business agent appointed the steward, sent a letter and card to that effect to the steward, and also sent a letter "to the job informing the job who the steward will be on the job." Other circumstances, hereinafter described, would also tend to indicate that Goldsmith was aware of the status of Stamp.

<sup>40/</sup> Statcavage was also known as Stack.

<sup>41/</sup> Newsom was the highest official of the Publix on the jobsite. He was in general charge of the project for Publix.

Newsom. The latter asked Stamp why he would not work with the CWA men. Stamp said they, 349, had fellow members out of work who were qualified to do the sound work and they should do the work. Stamp said it was a personal thing and that he could not work with anyone who was not cleared through the Local 349 hall. According to Stamp, Newsom then asked him what the other electricians on the job would do.<sup>42/</sup> Stamp said he did not know and that he had not talked to them. Stamp testified that Goldsmith who, in Stamp's words, "had apparently been on other construction jobs," observed, ". . . if that man goes probably all the other electricians will go, they will get sick, they will start dropping like flies and then leave. Mr. Newsom said, is that so? and I [Stamp] said, that's right, as far as I know it probably is, but I don't know exactly what they will do."

As a result of all the foregoing, Dade was not allowed to perform the sound work on the job. According to Stamp, Dick Williams Sound, Inc., who used Local 349 men, performed the sound work.

f. The Pan American Hospital job

Coker received from Pan American a contract for installing a nurses' call system and related sound work in the Pan American Hospital. Coker gave the labor on its contract to Dade. Kammer & Wood was the electrical subcontractor on the job. Sullivan, an electrical engineer, who had done the electrical engineering for the job, testified that in the course of his work he was on the jobsite from time to time and that general supervision was part of his work. While on the jobsite, sometime in January 1963, according to Sullivan, he had a conversation with Harrison, the electrical foreman on the job who was employed by Kammer and who was a member of Local 349. What prompted this particular conversation was the fact that Sullivan had become aware that Dade was going to perform the sound work on the job. Sullivan spoke

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<sup>42/</sup> At the time, there were 22 Local 349 journeymen on the job and 8 apprentices.



to Harrison about this and asked him whether or not he was going to walk off the job when the CWA men came on. A careful appraisal of Sullivan as a witness and of his testimony, including the other evidence in the record, persuades me that, on the whole, he was a credible witness. I find that Harrison replied to Sullivan, on the aforementioned occasion, in words or in substance, that he had been told not to work with them.<sup>43/</sup>

MacMillan and Oliveira first came to the job on February 6, 1963. Statcavage was also present, having come to go over some matters with Sullivan relating to the nurse call system. When MacMillan and Oliveira started to work in a section of the building, one of the electricians, Taylor, a Local 349 member, came to them and asked to see their union cards.

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<sup>43/</sup> At the instant hearing Sullivan testified that the answer that Harrison gave him was that he had been instructed by the business agent to walk off the job when the CWA men came on, but that Harrison did not name the business agent. On cross-examination by Respondent, Sullivan was asked whether, in the Federal District Court injunction proceeding in this case [March 7, 1963], he had testified that Harrison stated that the business agent had told him that they were not to work. Sullivan answered affirmatively and said that such was his best recollection of his prior testimony. Respondent's counsel then stated that he intended to introduce, before the close of the hearing, the prior testimony of the witness, which counsel stated, was different from his instant testimony. Counsel did not have the testimony in the prior hearing at that point. The Examiner expressed his receptiveness to this proposal. The General Counsel expressed no position. The following day, at the close of his case, Respondent introduced Sullivan's testimony in the District Court. The General Counsel objected on the ground that if there was a discrepancy between Sullivan's testimony in the two proceedings, Sullivan "is not available now to explain it." The General Counsel renewed his objection to Respondent's Exhibit 1, Sullivan's District Court testimony, in his brief. The Examiner received the exhibit and has considered its contents. Although Sullivan was not shown the prior transcript excerpt at the instant hearing, the matter of the content of his prior testimony was called to his attention and he recalled no inconsistency. The prior testimony was referred to on the preceding day and was available to the General Counsel as well as to Respondent and could have been procured and the witness could have been recalled or a continuance requested for such purpose.

In the District Court, Sullivan testified that Harrison "said he had been told not to work with them [Dade]. He did not relate to me who told him." I have considered the matter fully and do not regard Sullivan as a witness whose entire credibility has been destroyed.

There were produced and examined. <sup>44/</sup> Taylor testified that he believed that he, as a journeyman electrician, had a responsibility to check the cards in order to find out who the two men were. This is not too convincing since at the time he reported to Harrison about Dade, Taylor testified, he did not know anyone else on the job but he checked only the Dade cards.

Meanwhile, in another area on the job, Harrison spoke to Statcavage who was with Sullivan. Harrison asked when Statcavage was going to have the wire pulled into the job. The latter replied that the men were on the job at that moment. At this juncture, Taylor, who had just left MacMillan and Oliveira after checking their cards, came up. Taylor said to Harrison, according to Statcavage, substantially the following, that "they" are on the job now and we do not recognize their jurisdiction, we had better check. <sup>45/</sup> Statcavage said to Harrison, if there are going to be any

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<sup>44/</sup> Apte testified that the Union had appointed no steward for the Pan American job.

<sup>45/</sup> Sullivan testified that Taylor said, we know they are on the job and we are not supposed to work with them and Harrison said, I know it. Taylor and Harrison state that Taylor simply came up to Harrison and said, there are men down there working on the wire, pulling the wire or cable. In my opinion, the minimum import of what Taylor said to Harrison was that, as anticipated or as expected, those non-Local 349 men or those CWA men are working on the job and this is not to be ignored by us. Unless at least the foregoing was conveyed, there is no reason why Taylor would think it important to tell Harrison that there were men pulling wire on the job. Electricians commonly and customarily pull wire on a job so there would be no reason to report if 349 men were pulling wire; and if strangers, completely out of the blue, appeared and pulled wire, Harrison would not have known, as he quite apparently did, what Taylor was talking about, at least without some further conversation. The context of events and prior conversations make it clear that both Taylor and Harrison knew that they were not referring to a completely new and unexpected situation. I am also satisfied that the subject of the reaction by Harrison and Taylor and possibly the other electricians came up by reason of what Taylor said in reporting to Harrison and that Taylor did say something about not recognizing the jurisdiction of or working with the men whose cards he had checked. Thus, Harrison testified that in the ensuing conversation after Taylor's report, Statcavage said, there was no reason why "we" could not work with them because the two men were AFL-CIO just like yourselves (Local 349), and Harrison himself then went down to check the cards of the two men.

problems, let us check into it. More conversation took place and Harrison left to call the union hall. He returned and said that he had been unable to reach anyone. Harrison also had gone down and personally checked the union card of MacMillan or Oliveira. The lunch period then occurred and everyone went to lunch.

Harrison testified that the sound men (Dade) did not return immediately after lunch "and I figured maybe they were pulled off the job or something . . ." but "around 2 o'clock they did come back." Harrison went over some blueprints with MacMillan regarding some changes that had been made in electrical locations.<sup>46/</sup> Harrison testified that there "was a general unrest amongst the men and I figured what was coming up and one of the men came up to me and told me he was very unhappy about the situation and that he was leaving and I told him okay, so he put his tools away and left . . . and then from then on until all of the men left it was just a course of one after another coming to me and telling me that they were leaving and giving various reasons." Harrison states that he left at about 2:30 after the men had departed.

February 6, 1963, the day on which the above events took place, was a Wednesday. Payroll records of Kammer show that all the electricians worked only 6 hours on that day and none of them worked on that job the balance of the week. Harrison testified that Brush, after the February 6 walkout, sent him to another job where he worked for a few days.<sup>47/</sup>

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<sup>46/</sup> At one point in his examination, Harrison was asked, "Do you have any personal objection to working with Mr. MacMillan? A. "No."

<sup>47/</sup> As previously noted, Brush was referred to by various witnesses as Kammer & Wood's superintendent. This is probably an accurate enough description but it may be noted that Brush appears on the Kammer payroll for the various jobs as GF, general foreman, at \$4.75 per hour, together with the foremen, F, at \$4.25, and journeymen, J, at \$4. Brush is a member of Local 349. Presumed expertise in this field and a measure of official notice of contracts and related evidence in other Board cases, warrants the conclusion that, commonly, in the building construction industry, the unions negotiate the wage rates of general



Harrison testified that when the men walked off the job the first time, February 6, he and two or three others went to the union hall on February 7 and talked to Business Agent Albury. According to the witness, all that transpired was that "we told him that we had left the job and about the only thing he had to say about it was to advise us to go back to work."<sup>48/</sup> Harrison testified at this point that "We" went back to work the next day. However, at another point in his testimony he stated that he worked on another job (and he named the job specifically) for several days after the February 6 walkout. The payroll, as previously mentioned, shows that no electricians worked at Pan American for the balance of the week after February 6. Taylor states that they went back on the following Monday, which would be February 11. The testimony of MacMillan and Oliveira is that, after February 6, they (Dade) did not appear again on the Pan American job until February 19.

On February 19, MacMillan and Oliveira came on the job in the afternoon. The electricians again walked out and did not put in their 8 hours work although on the preceding day, February 18, and, on the following day, they worked 8 hours, plus an additional electrician who was hired on February 20 and worked 4 hours on February 20. Thereafter,

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<sup>47/</sup> (Continued from preceding page)  
foremen, foremen, and journeymen, and such rates are set forth in the contracts with the employers. The foregoing categories commonly obtain employment through the referral system operated by the Union and, depending upon circumstances, a general foreman may on occasion achieve a relatively high degree of regular and stable employment with a particular contractor. Usually a large contractor, for instance a national general contractor, will have at least several salaried superintendents and will employ, if the work is not subcontracted, general foremen, foremen, and journeymen in a particular craft at the job location. If subcontractors are involved they will have their own personnel setup, depending on their size, volume of business and other factors. Wage rates and other matters covered by union contract will be prescribed.

<sup>48/</sup> Without fixing the date, Albury states that one day Harrison came to the hall and said that there were some nonunion men on the job and he would like another job. Albury told him to go back to work because if he left the job Albury would have to send a replacement.



Statcavage and Sullivan made an arrangement, apparently with Brush, that McMillan and Oliveira would work evenings and weekends and the electricians would be working days. The Dade people then returned to work on the evening of February 21 or 22. On March 4, 1963, MacMillan and Oliveira came to work during the day<sup>49/</sup> and worked all that week with the exception of 1 day. All the electricians, seven in number, worked a total of only 10 hours each that week, 7 hours on March 4, 3 hours on March 5, and none for the balance of the week.<sup>50/</sup> The injunction hearing in the Federal District Court was held on March 7 and the injunction issued on March 8. On Monday, March 11, a new group of Local 349 electricians went to work on the job; Kammer, apparently acting through Brush, having sent the former group of electricians to another of its jobs. There have been no further work stoppages.

g. Summary and conclusions

Business Agent Apte of Respondent had, in May 1962, made it clear to Finn, the CWA representative, that Local 349 regarded the Dade CWA personnel as interlopers on Local 349's work. Local 349 regarded all the sound installation work performed or sought to be performed by Dade as Local 349's work. This is borne out by Business Agent Albury's testimony on the point, as well as by the aforementioned evidence regarding Apte, and the evidence with respect to all members, including stewards, who came in contact with the Dade situation.

Despite the foregoing, Respondent, in the instant case, has sought to convey the impression that it had no connection with any of the conduct previously described in this report and that it, in no way, was responsible for the activity directed against the Dade people. Respondent, in effect, is saying that despite what it considered to be the Dade encroachment on its jurisdiction, it did nothing to protect Local 349's jurisdiction

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<sup>49/</sup> MacMillan testified that they could no longer afford to work nights.

<sup>50/</sup> Harrison testified that he believed that, beginning on February 6, he had walked off the Pan American job on about four occasions. The dates would be, February 6, 19, March 4, 5.

by removing Dade from a job and that resulted in the work being assigned to members of Respondent, was not attributable to Respondent. Indeed, Respondent's business agents professed, in their testimony, to have practically no knowledge of or interest in the activity or presence of Dade personnel on various jobs. This lack of interest and activity to protect what it considers to be its jurisdiction is certainly not typical of the unions in the building and construction industry. It is probably accurate to say that a substantial part of the secondary boycott cases and jurisdictional dispute cases since 1947 have involved situations where building trades unions had taken action to protect what they considered to be their work against nonunion contractors employing nonunion labor or employing union labor affiliated with a competing union. Nor is Local 349's professed ignorance of and indifference to both the matter of Dade's alleged jurisdictional encroachment and the walkout activity of Local 349 members in response thereto consistent with various constitutional and bylaw provisions. Article XV of the 1962 constitution of the International Brotherhood of Electrical Workers, imposes upon its local unions the duty of protecting their jurisdiction.<sup>51/</sup> One of the Local 349 bylaws provides that it is the duty of the job steward to report to the Local any encroachment upon the jurisdiction of the Local.

On the Village job McLain was the Local 349 steward. I find Respondent's efforts to minimize the role of Steward McLain and of the stewards on the other jobs to be unconvincing. The stewards were appointed by the business agent and they functioned as this official normally

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<sup>51/</sup> "Article XV, Sec. 4. When a L. U. [Local Union] does not -- in the judgment of the I. P. [International President] -- organize or protect the jurisdiction or territory awarded it, then its charter may be suspended or revoked by the I. P. and a new L. U. established on the jurisdiction or territory awarded to another L. U. or L. Us." One of the documents that a labor organization is obliged to file and which is publicly available under the Labor Management Reporting and Disclosure Act of 1959 is the constitution. I have taken official notice of the aforementioned constitution. But quite apart from and independent of the existence of such a constitutional provision, it is a reasonable inference to assume that Local 340 would be alert to protecting its work jurisdiction which is the crux of its existence.

does in the union movement, as on-the-job representative and agent of the Union.<sup>52/</sup>

McLain and the other Local 349 members had walked off the Miller Electric job because MacMillan was working, around May 1962.<sup>53/</sup> There is no evidence that Respondent disciplined any of its members because of their walkout or warned them about a repetition or did anything else but continue to treat them as members in good standing. Since McLain and the other men had not worked on the job for several days as a result of their walkout they were not paid. The situation as to pay was, of course, no different than if they had not worked because they wished to spend some time at home or engage in some other activity. McLain, for instance, came back to Miller Electric job after 6 days and by the time when MacMillan was no longer working. The Miller Electric matter was involved in the prior Board and court cases and for this reason alone Respondent was aware of its members activities. The bylaws of the Local provide that the steward is to report any encroachment upon the jurisdiction of the Local (such as MacMillan working) and it is also provided that the

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<sup>52/</sup> "The steward is to the union what the foreman is to the company -- the key man in its whole collective-bargaining setup. Just as the foreman is the company to the average worker, so the steward is the union." U.S. Department of Labor, Division of Labor Standards, Bulletin No. 60, G.P.O. 1944, p. 32; "... In AFL-CIO Unions, stewards are the first line leadership..." AFL-CIO Manual for Shop Stewards, AFL-CIO Publication No. 75; the positions of "stewards..." in the union are certainly comparable to that of the foremen on a factory floor." N.L.R.B. v. Brewery & Beer Distributor Drivers, International Brotherhood of Teamsters, 281 F.2d 319, 322 (C.A. 3). "One of the typical functions that he [the steward] performs is to serve as a channel of communication between the union and its members." Local 1016, United Brotherhood of Carpenters, AFL-CIO, 117 NLRB 1739, 1746.

<sup>53/</sup> The record does not show the exact date of the incident but the Miller Electric affair was part of the prior case in which a Board Order and court decree issued. Since the charge in that case was filed in May 1962, it is reasonable to assume that the Miller Electric affair occurred around that period. With respect to Miller Electric, McLain was not the steward.

steward shall immediately notify the business agent of any trouble on the job. Business Agent Albury's testimony that he did not regard a work stoppage as trouble is, in my opinion, implausible. The crux of the union's activity was to supply labor to a job that would complete it competently and without interruption and to secure for its members maximum steady employment. However, if Albury actually did not regard a work stoppage as trouble it could be because, generally, or, under certain circumstances, he regarded such activity as normal and acceptable practice.

Without repeating the details of the July 27, 1962, incident, heretofore described, the evidence is that McLain, the steward, walked off the job because MacMillan was not a member of Local 349. All the other electricians, members of Local 349, including the working foreman, Logan, also left. Coker thereafter awarded the sound work to Burns, the contractor who was the employer of McLain, Logan, and the other Local 349 men.

The day after the walkout on July 27 McLain and Albury state that the former simply told Albury that there were some nonunion men on the job and that he wanted another job. Albury told McLain that the best thing for McLain to do was to go back to work or Albury would have to replace him. The testimony is that this was the extent of the conversation. Although, in addition to being steward on the job, McLain was a good friend of Albury, nothing was asked and nothing said about the attitude or action of the other Local 349 men on the job; nothing was said about who the nonunion men were or what type of work they were doing. As far as the testimony would indicate, Albury was indifferent to whether the nonunion men were the gatekeepers on the jobsite, or employees who came to fill a soft drink machine, or nonunion electricians who were performing the electrical wiring for lights and fixtures on the job and thus doing the very work that Burns' contract with Local 349 covered. The foregoing factors raise considerable doubt as to exactly what the two men said to each other but I believe that at least part of the conversation was as testified to and that Albury did tell McLain that which has been described above.

McLain went back to the job after his talk with Albury. While on his way, a group of the Local 349 men, who had walked off the job on the



preceding day when McLain had left, stopped McLain and asked him where he was going. McLain said he was going back to work. He gave no explanation why and no explanation was asked for. These other men returned to work that same day. In my opinion, the only valid explanation is that it was sufficient that the steward was returning to work. The other men would follow, just as when the steward had walked off, the others had also walked off.

On September 13, 1962, MacMillan and Oliveira came to the Village job shortly before noon. The testimony is uncontroverted that Logan asked them if they were going to work on the job. Upon being told that this was the fact Logan said that he had to leave because he had two strikes against him. The evidence persuades me that neither Logan nor other Local 349 electricians worked on the afternoon of September 13 or on September 14 although there was work for them to do. McLain's testimony indicates that he was a participant in the failure to work on September 13 and 14. The record shows two work stoppages on the Village job, one on July 27 and the other on September 13-14, 1962. Sometime after his return to work on July 28, McLain admittedly warned his employer, Burns, that if MacMillan and Oliveira worked on the job he would leave as he had done "the other day" [July 27].<sup>54/</sup> Such was the prediction and the warning. McLain had told Statcavage in August that if he walked off the job the others would follow. Without recalling the exact date, McLain testified that there was a second time when he walked off the Village job because of the presence of MacMillan. He believed that this occurred around noon. As previously mentioned, we have seen that the second walkout on the Village job occurred on the afternoon of September 13.

Later, in the same month of September 1962, on the Miami Laundry job, the steward on the job, Disney, in a conversation at which Statcavage

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<sup>54/</sup> This would indicate that the Dade people were not working on July 28 when McLain and the others returned and that the Dade people did not work at Village after the July 27 walkout until they returned on September 13.

and Coker, MacMillan, and Working Foreman Diaz were present, said that he would not work on the job if MacMillan came on and that if MacMillan did come to work there would be a work stoppage. Although the sound contract had been originally awarded to Dade, someone who was apparently aware of what was to occur and who was confident of the outcome, had arranged for two Local 349 sound journeymen to report to the job on the very day when Dade arrived to perform its contract. One of the Local 349 sound men arrived on the job at the time of the above Disney pronouncement and he advised that the other journeyman was on his way from the hall. The Local 349 men would, of course, be on the payroll of the electrical subcontractor, O'Donovan, who was already employing Disney, Diaz and other electricians. But the interesting aspect is that the Local 349 sound men had been dispatched to the job, and one had arrived, before the Dade contract was cancelled and before the sound work was awarded to O'Donovan. There is no evidence or reasonable basis for believing that either Miami Laundry, Coker, or O'Donovan had the foreknowledge to arrange for Local 340 sound journeymen to come to the job when they did. It would appear that only Disney, the steward, and possibly the union hall, would have known what was going to happen when Dade arrived to perform its contract. Disney would threaten a walkout and, if necessary, precipitate a walkout of himself and the other electricians. This would, quite predictably, remove Dade from the picture and it would be appropriate and opportune to be ready with Local 349 sound men.<sup>55/</sup> In any event, after Disney made his pronouncement abovementioned, Coker did cancel its contract with Dade and awarded the work to O'Donovan who employed Local 349 men.

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<sup>55/</sup> On the Village job, the steward, McLain, had taken the initiative to arrange for Local 349 sound men to come to the job because, McLain said, he was led to believe that the union contractor, Burns, had the sound contract. In fact, Coker had given the sound contract to Dade but as the result of Local 349 men refusing to work with Dade, the sound contract was taken from Dade and given to Burns.

On the Publix job, on February 4, 1963, Stamp, the steward, informed Goldsmith, the Publix construction superintendent, that he would not work with Dade CWA people. A short time later, in the presence of Goldsmith, Statcavage, and Dade, Stamp repeated his statement. Browning, the working foreman of the Local 349 electricians, who was present, said the same thing. The problem was taken up with the top Publix official, Newsom. The latter asked what the other electricians would do. Goldsmith, experienced in the construction industry, said, that if Stamp walked out all the others would walk out. Stamp affirmed Goldsmith's prediction, ". . . that's right, as far as I know it probably is" but he said that he did not know "exactly." The sound contract was then given to a contractor who employed Local 349 men.

Business Agent Apte testified that Respondent appointed no steward on the Pan American job.<sup>56/</sup> He also said that a Local 349 bylaw that provided, in the event that a steward was not appointed, that the first journeyman on the job is to be the steward, had not been used in years. The foregoing is rather surprising since the job was a reasonably substantial one, employing about 6 or 7 Local 349 electricians. Either Respondent was not interested in having anyone protect the union interests and work jurisdiction, a matter vital to the existence of Respondent and one of its prime obligations as a local; or some member or members were entrusted with the duties but not the designation of steward; or, from experience as to how its members would act, Respondent was content to be without a steward.

Harrison had previously advised Sullivan that he had been told not to work with the Dade CWA people. This response was given in reply to question as to whether Harrison would work with Dade. In thus appears that whoever had so instructed Harrison was someone in authority, whose instructions he regarded as binding. There is no indication that such an instruction came from Harrison's employer or any other employer.

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<sup>56/</sup> Dade had been given the sound contract at Pan American.

Under the circumstances, the reasonable inference is that the instruction came from Respondent. Taylor undertook to check the union cards of the Dade people when they came on the job. This is a function normally performed by a steward as many Board cases will show and as is shown in the instant record on other jobs where the steward checked the status of the Dade people. In reporting the matter to Harrison, Taylor said that "they" are on the job now and we do not recognize their jurisdiction. The language of Taylor and the circumstances, previously detailed in this report, warrant the conclusion that the advent of Dade was not unanticipated. Harrison then checked the union cards of Dade. All those immediately involved, Sullivan, Statcavage, Dade, Harrison, and Taylor recognized that the presence of the Dade people on the job had created a crisis. It was clear that the Local 349 men were not going to work with Dade. Harrison had previously said as much and Taylor's remarks had also indicated this. That the removal of Dade was essential and was expected is confirmed by Harrison's remark, when Dade did not return immediately after lunch, that he figured that they had been pulled off the job. However, when Dade returned on that same afternoon, all the Local 349 electricians walked off the job giving various reasons to Harrison. Harrison also left.

The next day Harrison and some of the other Local 349 men talked to Business Agent Albury. According to Harrison, "We told him that we had left the job and about the only thing he had to say about it was to advise us to go back to work." This is another cryptic conversation where no information was given or asked for concerning the details of the trouble, the identify of the nonunion men, or anything else. However, neither Harrison nor any other Local 349 men went to work at Pan American between February 6 and 11. Harrison worked on another Local 349 job of Kammer during the interval. On February 19 the Dade people returned to the Pan American job. All the electricians walked out. The next time that the Dade people came on the job when the Local 349 men were working was on March 4, 1963, and Dade worked the balance of that week. The electricians walked out on March 4 and 5 and did not work the balance of the week.



On the Lincoln National job Laschower was the working foreman and received foreman's wages. There were no other electricians on the job except a helper, who worked a few hours on 1 or 2 days. Without repeating the details, it can be said that Laschower stated on January 17 that Dade was nonunion and that he could not work with them on the job. Laschower called Apte on that same day and told him there were men doing his work and that he was not going to work with them. Apte said that he had no objection to Laschower not working with the men (unidentified and the circumstances were not described) but that if Laschower left the job, Apte would be obliged to send a replacement if so requested by the contractor. After the call, Apte told Mahieu that he could not work and the next day he worked on another Local 349 job.

Following the conversations with Laschower on January 17, Mahieu on the same day, called Callahan, Local 349 head business agent or business manager. Mahieu told Callahan about the entire problem that had arisen by reason of Laschower's statements that he would not work with Dade. Callahan said that he was meeting with Kammer that afternoon and would mention the matter to him. Later, that day, Callahan told Mahieu that Kammer knew nothing about the matter. Thereafter MacMillan was removed from the job.

MacMillan came to work at Lincoln National on January 21, 1963, and Laschower again walked off. In February, Laschower did work on the job while Oliveira was working but only after being assured that Lincoln National or the general contractor, Arkin, would pay any fine that Laschower might incur from his union.

The evidence in the record which has been described in this report shows a uniform pattern of conduct from May 1962 to about the second week in March 1963. This conduct ceased at the latter date because of the issuance of an injunction by a Federal District Court and quite evidently because the Respondent took effective steps, pursuant to the injunction, to stop the aforementioned pattern of conduct. The pattern of conduct was the fact that, over many months, on a variety of different construction projects, all Respondent's members working on these jobs

uniformly refused to work when Dade CWA men performed or sought to perform sound installation work pursuant to contract with contractors who had awarded such work to Dade.

Respondent's position, based on the testimony of its business agents and members, is that the aforementioned actions of its members were the result of principles espoused by each individual. The individuals, assertedly, had a standard that prevented them from working with nonunion men and they so regarded the Dade CWA people, and, further, they regarded the Dade people as interlopers who were performing work that belonged to Local 349 and that unemployed Local 349 men should perform. The foregoing position, however, does not change the fact that there was a uniform pattern of conduct by the members. What Respondent is contending is, in effect, that the factual pattern of conduct was due to a coincidence, the coinciding of a substantial number of individual but uniform standards of conduct or belief, and, in any event, that Respondent was not responsible for this conduct. In denying responsibility, Respondent adduced testimony that it had no rules, law, or policy that enjoined members from working with non-members and the fact that there was no evidence of a business agent or other agent telling the members to stop working on the various jobs when the Dade people appeared. Respondent's contentions about lack of bylaw and constitutional provisions requiring members not to work with nonmembers are no doubt addressed to the fact that in many of the Board's secondary boycott cases the defense was that the strikes and refusals to work were attributed to the employees as individuals who did not wish to work with nonunion employees. The defense is therefore by no means novel but it commonly ran into difficulty because either the Union, through the business agent, called the employees out on strike or because a bylaw or constitutional provision forbade working with nonunion men.<sup>57/</sup> In the instant case, Respondent presents "the individual philosophy of individual members" defense but without the contemporaneous

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<sup>57/</sup> A recent case on this is Local 3, IBEW, AFL-CIO and New York Telephone Company, 140 NLRB No. 71.

existence of union rules requiring, in effect, that such individual philosophies be held and be implemented. The individual standard of not working with nonunion men is the same in the instant case as in cases where the individual philosophy was nurtured and existed by reason of union rules.

Since it is not like a birthmark and people are not born with a philosophy of not working with nonunion men, this standard of conduct must be acquired. It is not acquired by simply being an employee because of 70 million persons in the American work force relatively few have such standards. This is true even among the approximately 18 million organized employees, many of whom work with nonunion employees or with members of competing unions. Judging by the evidence and findings in many cases, the aforementioned standard of conduct is characteristic of the members of certain unions in certain industries. However, our concern in the instant case is limited to Respondent and we need not concern ourselves beyond Respondent. The evidence regarding a series of jobs over many months with a fair cross section of members establishes that, without exception, the members involved refused to work on jobs where Dade CWA people were employed. Indeed, this is Respondent's defense. Respondent asserts that its members would not work with Dade and that Respondent neither told them not to work nor did it "trigger" or cause its members to activate their respective individual standards of not working.

Prescinding from the question of whether Respondent inspired or imposed the standard of not working with nonunion people or whether it "triggered" the implementation of such a standard, however originally acquired, let us consider the matter from another aspect.

As previously stated, Respondent's members, on a series of jobs over many months, were refusing to work with Dade because the Dade people were nonunion, i.e., non-Local 349. The evidence leaves no doubt in my mind that Respondent was aware of what was going on. First of all, the number of jobsites involved and the period of time encompassed were

such that the business agents would have to have been completely insensate to be unaware of the situation. They were none of these, particularly since, as we have seen, the protection of its work jurisdiction was one of the prime responsibilities of the Local and of its officials. Dade was a genuine challenge on the score of work jurisdiction and Respondent recognized that fact. Work performed by Dade was that much less work for Local 349. Secondly, a charge had been filed against Respondent in May 1962. Pursuant to a settlement there was a Board Order and a Court Decree. This focused attention on the activities of Dade. Respondent posted notices in its hall and offices as required by the Order and Decree. The notices referred to the proscribed conduct and Dade and the employers involved were specifically mentioned. Local 349 does not have a Board Order and a Court of Appeals Decree every day in the week. Thirdly, Business Agent Apte, in May 1962, was fully aware of what was going on. In effect, he gave Finn, of the CWA, an ultimatum and predicted that the Local 349 men would be walking off their job if Finn did not remove the CWA men. With the Board proceeding against Local 349, Apte thereafter conducted himself with some care but I am not persuaded that he banished the Dade threat to the Local's work jurisdiction from his mind. It is more likely that he followed the matter with greater attention thereafter. Fourthly, Local 349 was running a hiring hall which necessitated that it be fully informed and aware of which members were working, where they were working, and when they were working. The steward, appointed by the Union, kept the time records of the men on the job and this was for the use of the Union since the foreman kept the time for the employer. Fifthly, Mahieu, a representative of Electronic, appealed to Callahan, the head business agent, and told him that the working foreman on the Lincoln National job, Laschower, a Local 349 member, was refusing to work if Dade worked. Callahan, of course, knew that a working foreman was as subject to Local 349 discipline as any other member and that was quite clearly why Mahieu had called Callahan. The latter, however, did nothing but report that the contractor, Kammer, knew nothing about the matter. This, of course, was fairly obvious since



it was Kammer's work that Laschower was threatening not to perform if Dade went to work and this is undoubtedly why Mahieu called Callahan in the first place. Sixthly, the instant charge was filed on February 7, 1963, and the conduct that is the subject of this case took place both before and after that date. Seventhly, the union stewards on jobs to which they were assigned were representatives and agents of Local 349. Eighthly, the series of work stoppages required the consent of Local 349 and, as testimony of various members reveals, they regarded themselves as good union members and their refusal to work with nonunion people was a demonstration of their own union loyalty. No penalty was imposed for any work stoppages in the instant case and stewards were participants in the work stoppages.<sup>58/</sup>

Respondent's awareness of what was taking place on the various jobs over a substantial period of time and its inaction and acquiescence in the conduct does not jibe with Respondent's assertion in its brief that whenever higher union officials "were brought into contact with events" they disavowed what was taking place or accomplished "at least a withdrawal" of the Union from responsibility for the conduct.

McLain had been a journeyman on the Miller Electric job around May 1962. He had participated in a walkout with other Local 349 members on that job because of the presence of Dade. Although McLain had absented himself from the Miller job for 6 days and a court proceeding had evidently taken place (of which Respondent was of course aware) Respondent took no disciplinary action against McLain or anyone else although, in addition to the original work stoppage, there was no return to work until after Dade was no longer on the job. Thereafter, in fact,

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<sup>58/</sup> Cited in the case of Local 3, IBEW, AFL-CIO and New York Telephone Company, supra, is IBEW constitution, article XXVII, Sec. 2(19). This article is of course binding on Local 349. It provides for enforcement by penalty against any member who violates the following provision: "Causing a stoppage of work because of any alleged grievance or dispute without having consent of the L.U. [Local Union] or its proper officers."

Respondent appointed McLain as its steward on the Village job and the electricians walked out on that job on July 27, 1962. The following morning McLain advised Business Agent Albury that there were some nonunion men on the job and that he wanted another job. Albury advised McLain that the "best thing" to do was to go to work and that if he did not Albury would have to replace him. McLain went back to the job. By this time Dade was no longer there and the walkout had apparently accomplished its purpose. The work was assigned to Local 349 men by Burns who had replaced Dade on the sound work. When Dade once more received a contract and appeared on the job, there was a second walkout, including McLain, on September 13 and 14, 1962.

On February 6, 1963, a Wednesday, all the electricians walked off the Pan American job because of the presence of Dade. The next day, Harrison, the foreman, and some of the others who walked off, spoke to Albury who advised them to return because Albury would have to send replacements. The men did not return to work until the following Monday, February 11, 1962, but no replacements had been sent in the meantime, and no disciplinary action was taken. There was another walkout on February 18 for the same reason and also the week of March 4. When a District Court injunction issued, Respondent, which had never taken any disciplinary action against its members who had engaged in the aforementioned walkouts, did not take any action regarding these men but simply sent them to or cleared them for another job. Another group of electricians was sent to the Pan American job, apparently with meaningful instructions that there was to be no walkout.

In January 1962, with reference to Lincoln National, Laschower told Apte that there were men doing his work and he was not going to continue on the job. Apte said that he had no objection to Laschower not working with the men but if Laschower left and Kammer, the electrical contractor, asked for replacements Apte would be required to send them. Laschower had already told Mahieu and Herold of Electronics that he would not work with Dade and what Apte told him did not bother him in the least and he thereafter reiterated his original position. Dade was

able to install the switchboard, not because Laschower was disciplined or replaced, but because the latter was temporarily transferred by the contractor to another job, Douglas Gardens, in order that the switchboard could be installed. On January 21, Laschower again refused to work with Dade and the latter was removed as a consequence. Head Business Agent Callahan's indifference and failure to take action regarding the Lincoln National situation has previously been described.

There are certain aspects of the foregoing incidents involving Apte, Albury and Callahan that should be noted. The stoppages of work or the threat had already occurred when the Local 349 men spoke to the business agent. Apte said he did not care about the member's refusal to work but he would have to send a replacement if it was asked for by Kammer. Callahan ignored the situation. On none of the jobs in this record did Respondent send replacements although the walkouts and refusals to work were for varied periods of time. In no instance did the electrical contractors, all of whom were union contractors in contractual relations with Local 349, ask for replacements.<sup>59/</sup> In addition, individual contractors, like Kammer, as well as Burns, were members of Local 349. Brush, the superintendent or general foreman for Kammer was a Local 349 member. All the contractors were experienced in their industry. There was no reason why anyone would conclude that other members of Local 349 would behave any differently than these who were refusing to work with Dade. Further, the time element in building construction is highly important and replacement took time and would also entail new men acquainting themselves with blueprints and work already underway, with which those on the job were already thoroughly familiar. Arkin's testimony regarding the Lincoln National situation is a good illustration.

The evidence persuades me that Apte and Albury were engaging in rather transparent gestures in dealing with the work stoppage. They

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<sup>59/</sup> After the District Court injunction in March 1963, Brush of Kammer and Apte did decide on replacements.

sought to avoid demonstrable responsibility but their remarks about replacements were unmeaningful in view of the circumstances and were not followed up in any event. Replacement is not much of a sanction if it, predictably and actually, never takes place and in the instance where it did take place, in March 1963 on Pan American, those who were replaced were simply sent to another job. At no time was disciplinary action even mentioned.

By way of analogy with Local 349's conduct, let us consider the case of a general manager of a large manufacturing company. There is evidence of hostility of the company to outside union activity; there have been charges filed against the company; the manager receives regular records of employment matters from subordinates. Over a period of 10 months in six different departments of the plant different employee members of an inside union at various times assault and physically eject employees who have joined an outside union. Several of the members of the inside union who have engaged in this conduct have informed the manager of what they have done. The only thing the manager says is either, I do not care what you do but if someone complains about your conduct I will have to replace you; or, the manager says, go back to work or I will have to replace you (if someone brings up the matter). There can be little doubt that the employer in the illustration would be responsible for the constructive discharges of the outside union members among its employees.

Ordinarily, a company is not responsible for conduct of employees or persons who are not agents. An association, fraternal or labor, is not ordinarily responsible for conduct of an individual member or for conduct of several members. But, under appropriate circumstances, it is proper to impute responsibility. For instance, the Fraternal Order of Otters conducts or participates in a series of public functions over a period of many months. At every such function, all the Otters participating refuse to continue and walk out when a member of a particular race or religion appears at the function. Each Otter states that this is a matter of individual principle and that the Fraternal Order has no rules



or requirements against participating with those of the particular race or religion. Assuming other circumstances similar to those in the instant case, it would be difficult for the Fraternal Order to say, after taking no effective action, that it did not acquiesce in and tolerate such principles among its members. Individuals may entertain almost any personal standards they wish but, when a fair cross section of members manifest and adhere to these standards on a representative number of occasions over a period of many months it is a reasonable basis for concluding that the organization of which they are members tolerates and accepts such standards. It is a case of, you can believe or do what you wish, but if you are members of an organization you must conform to the standards of that organization or be disciplined or expelled. If no effective action is taken with respect to your conduct in the very field of activity in which the organization is engaged, it is reasonable to assume, if the instances are frequent and over a period of time, that your conduct is acquiesced in and approved by the organization. Indeed, in the instant case it would appear that the principle of not working with nonunion people, or, more specifically, Dade, was part of the mores of Local 349 and its members and was accepted as such. In the light of these circumstances Local 349 must, I believe, bear the responsibility for the various acts described in this report.

In addition to the foregoing, there is evidence of Respondent's participation in the various acts of its members. On the Village job, McLain, the steward, participated in and triggered the walkouts. All the electricians left when he left in July. They came back on the occasion when McLain returned, after asking McLain the sole question, where he was going. It was enough that the steward was returning and the others then returned. Again, in September, McLain and all the others left when Dade came on the job. On the Miami Laundry job, the steward also was the decisive factor in threatening a work stoppage. With the exception of a helper who assisted him from time to time, Laschower was the only electrician, during the relevant period, on the Lincoln National job. Apparently, he was given the title of foreman in order that he might be paid a

foreman's hourly wage. This was probably because as the sole craftsman on the job he was performing work requiring substantial competence without immediate supervision. Journeymen are assisted by helpers and are not thereby foremen. Laschower was therefore, in effect, a foreman without portfolio. As the first and only Local 349 man on the job, except for a helper on a few occasions, Laschower was his own steward and foreman rolled into one. He refused to work with Dade and neither Apte nor Callahan took any effective steps to alter the situation arising by reason of Laschower's conduct. On the Publix job, the steward again triggered the situation of threatening a walkout, and Goldsmith of Publix, who, according to the steward, was experienced in the construction industry, immediately understood the situation and realized that all the electricians would walk out, a fact not disavowed by the steward when asked. With respect to the Pan American job, Foreman Harrison and Taylor were the ones who undertook to check and recheck the Dade union cards. Harrison said previously that he had been told not to work with Dade. It appears that the only logical source of such an instruction was Respondent. Harrison's and Taylor's various acts and statements indicate that they were prepared for the appearance of Dade on the job. Although Taylor testified that he did not know any of the other electricians on the job he had not checked their cards but confined this activity to Dade. In some unexplained way all the electricians knew that they should and did walk off the job after Harrison and Taylor had checked the Dade cards. Harrison, Taylor and the other electricians walked off the job on about four occasions because of the presence of Dade.

It is, therefore, found that on September 13 and 14, 1962, Respondent engaged in a strike and a refusal to work on the Village job by acquiescing in, tolerating, failing to take effective measures to prevent and ratifying, a code of conduct by its members not to work with people regarded as nonunion, and strikes and refusals to work by its members employed by Burns, notwithstanding similar conduct by its members in May and July 1962; that by the example, participation and activity of its agent and representative, the steward, McLain, on September 13 and 14,

1962, Respondent induced and encouraged individuals employed by Burns, members of Respondent, to strike and to refuse to work, thereby, by all the foregoing conduct, threatening, restraining, and coercing, Flink, Coker, Burns, and Village. An object of all the aforementioned conduct was to force or require the aforementioned contractors or persons to cease doing business with Dade. This conduct was in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

In the last part of September 1962, it is found that, on the Miami Laundry job, Respondent engaged in a refusal to work by acquiescing in, tolerating, failing to take effective measures to prevent and ratifying, a code of conduct by its members not to work with people regarded as non-union, and refusals to work by its members employed by O'Donovan, notwithstanding similar conduct by its members in May and July 1962, and on September 13 and 14, 1962; that by the example, participation, and statements of its agent and representative, the steward, Disney, in the last part of September 1962, Respondent induced and encouraged persons employed by O'Donovan, particularly Diaz, a member of Respondent, to refuse to work, thereby, by all the foregoing conduct, threatening, restraining, and coercing Coker, O'Donovan, and Miami Laundry. An object of all the aforementioned conduct was to force or require the aforementioned contractors or persons to cease doing business with Dade. This conduct was in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

It is found that on January 17, 21, and early February 1963, at Lincoln National,<sup>60/</sup> Respondent engaged in a refusal to work by acquiescing in, tolerating, failing to take effective measures to prevent and ratifying, a code of conduct by its members not to work with people regarded as nonunion and refusals to work by its members employed by Kammer, notwithstanding other similar conduct by its members in May and July 1962; September 13 and 14, 1962; the last part of September 1962. By the aforesaid conduct Respondent threatened, restrained and

<sup>60/</sup> The Lincoln National events were fully litigated, including Laschower's testimony that there was only one day when he did not work at Lincoln.

coerced Electronic, Lincoln National, Kammer and Arkin. An object of all the aforementioned conduct was to force or require the aforesaid contractors or persons to cease doing business with Dade. This conduct was in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

On February 4, 1963, at the Publix job, Respondent engaged in a refusal to work by acquiescing in, tolerating, failing to take effective measures to prevent and ratifying, a code of conduct by its members not to work with people regarded as nonunion and refusals to work by its members employed by Kammer, notwithstanding other similar conduct by its members in May and July 1962; September 13 and 14 and the last part of September 1962; on January 17, 21, and early February 1963; that by the example, participation and activity of its agent and representative, the steward, Stamp, on February 4, 1963, Respondent induced and encouraged individuals employed by Kammer, members of Respondent, to strike and to refuse to work. By the aforesaid conduct Respondent threatened, restrained and coerced Publix, Coker and Kammer. An object of all the aforementioned conduct was to force or require the aforesaid contractors or persons to cease doing business with Dade. This conduct was in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

It is found that on February 6-11, February 19, March 4-8, 1963, at Pan American, Respondent engaged in a refusal to work by acquiescing in, tolerating, failing to take effective measures to prevent and ratifying, a code of conduct by its members not to work with people regarded as nonunion and refusals to work by its members employed by Kammer, notwithstanding other similar conduct by its members in May and July 1962; September 13 and 14, 1962; the last part of September 1962; January 17, 21 and early February 1963; February 4, 1963. By the aforesaid conduct; and, by instructions to members, given prior to February 1963, not to work with Dade or to recognize any right of Dade to perform sound work, Respondent induced and encouraged individuals employed by Kammer not to work. By the aforesaid conduct, Respondent threatened, restrained, and coerced Pan American, Coker and Kammer. An object of all the aforementioned conduct was to force or require the aforesaid contractors



or persons to cease doing business with Dade. This conduct was in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.<sup>61/</sup>

#### IV. The effect of the unfair labor practices upon commerce

The activities of Respondent as set forth above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The remedy

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(b)(4)(i) and (ii)(B) of the Act it is recommended that it cease and desist therefrom and take certain affirmative action designed to remedy the unfair labor practices and to effectuate the purposes of the Act. The nature of the violations make a broad order appropriate although, as noted previously, there is an outstanding order of the Board that is a broad order and a Court of Appeals Decree that is equally broad.

#### Conclusions of Law

1. The Employers as described in section I, above, are employers engaged in commerce, and Respondent is a labor organization, all within the meaning of the Act.

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<sup>61/</sup> MacMillan of Dade had been a member of IBEW for about 9 years, principally in White Plains, New York. He had worked out of Local 349 for about a year and then went into business as a contractor. As a contractor he had had a contract with Local 349 for 1 1/2 or 2 years. A former IBEW cardholder had some kind of a dispute with MacMillan about some money allegedly owed. None of the Local 349 members involved in the instant case were parties to the aforesaid dispute and there is no evidence that they were aware of MacMillan's past or were motivated by any feelings in that regard.

Subsequent to the close of the hearing, the General Counsel and the Respondent filed separate motions to correct the record. The General Counsel's motion is granted, with the following exception: On item 1 the motion is granted except that the word "didn't," on l. 5, p. 134, is not changed to "don't." Respondent's motion is granted.

2. By the conduct described in section III, above, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

### RECOMMENDATIONS

Upon the basis of the foregoing findings of fact, conclusionary findings, and conclusions of law, and on the entire record in the case, it is recommended that Respondent, its officers, representatives, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Engaging in strikes or refusals to work for Burns & Yaeger, Kammer & Wood, Inc., R. L. O'Donovan, or any other person engaged in commerce or in an industry affecting commerce, by acquiescing in, tolerating, failing to take effective measures to prevent, and ratifying, strikes, walkouts, refusals to work, and a code of conduct by members not to work with people regarded as nonunion; or engaging in or inducing or encouraging individuals employed by Burns & Yaeger, Kammer & Wood, Inc., R. L. O'Donovan, or any other person, engaged in commerce or in an industry affecting commerce, to engage in, strikes or refusals in the course of their employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where, in any case aforescribed, an object thereof is to force or require the aforesaid employers or persons or Richard S. Flink, Inc., J. M. Coker, Inc., Village Green Crown Lanes, Inc., Miami Laundry and Dry Cleaners, Inc., Lincoln National Life Insurance Co., Electronic Wholesalers, Inc., Arkin Construction Co., Inc., Publix Super Markets, Inc., Pan American Hospital, or any other person engaged in commerce or in an industry affecting commerce, to cease doing business with Dade Sound and Controls or with any other person.

(b) Threatening, restraining, or coercing Richard S. Flink, Inc., J. M. Coker, Inc., Burns & Yaeger, Village Green Crown Lanes, Inc., R. L. O'Donovan, Miami Laundry and Dry Cleaners, Inc., Electronic Wholesalers, Inc., Lincoln National Life Insurance Co., Inc.,

Kammer & Wood, Inc., Arkin Construction Co., Inc., Publix Super Markets, Inc., or Pan American Hospital, or any other person engaged in commerce or in an industry affecting commerce, where an object is to force or require the aforesaid employers or persons to cease doing business with Dade Sound and Controls or with any other person.

2. Take the following affirmative action to effectuate the policies of the Act.

(a) Post in conspicuous places in Respondent's business office, meeting halls, and all places where notices to members are customarily posted, copies of the notice attached hereto and marked Appendix. <sup>62/</sup> Copies of said notice to be furnished by the Regional Director for the Twelfth Region, shall, after being signed by Respondent's authorized representative, be posted by Respondent immediately upon receipt thereof and maintained by it for 60 consecutive days. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of said notice to the aforesaid Regional Director for forwarding to each of the employers named above for their information, and, if any or all of them are willing, for posting by each of the said employers, at all locations where notices to their respective employees are customarily posted.

(c) Notify the said Regional Director, in writing, within 20 days from the receipt of this report, what steps Respondent has taken to comply herewith. <sup>63/</sup>

Dated at Washington, D.C.

/s/ Ramey Donovan  
Trial Examiner

<sup>62/</sup> If these Recommendations are adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice will be further amended by the substitution of the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" for the words "A DECISION AND ORDER."

<sup>63/</sup> If these Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Region, in writing within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

## APPENDIX

## NOTICE

TO ALL MEMBERS OF LOCAL 349, INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, AFL-CIO

## THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT engage in strikes or refusals to work for Burns & Yeager, Kammer & Wood, Inc., R. L. O'Donovan or any other person engaged in commerce or in an industry affecting commerce by tolerating such conduct by our members or by failing to take effective measures against such conduct by our members when working under our jurisdiction;

WE WILL NOT engage in or induce or encourage individuals employed by Burns & Yeager, Kammer & Wood, Inc., R. L. O'Donovan, or any other person engaged in commerce or in an industry affecting commerce to engage in strikes or refusals to work or to perform services;

WE WILL NOT threaten, restrain, or coerce J. M. Coker, Inc., Burns & Yeager, Kammer & Wood, Inc., Richard S. Flink, Inc., Village Green Crown Lanes, Inc., R. L. O'Donovan, Miami Laundry and Dry Cleaners, Inc., Electronic Wholesalers, Inc., Arkin Construction Co., Inc., Publix Super Markets, Inc., Pan American Hospital, or any other person engaged in commerce or in an industry affecting commerce;

WHERE, in any of the foregoing instances, an object is to force or require the aforesaid employers or persons or any other person engaged in commerce or in an industry affecting commerce, to cease doing business with Dade and Sound Controls or with any other person.

LOCAL 349, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL  
WORKERS, AFL-CIO  
(Labor Organization)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, Ross Building, 112 East Cass Street, Tampa, Florida, 33602 (Tel. No. 223-4623), if they have any question concerning this notice or compliance with its provisions.



**RESPONDENT LOCAL UNION 349, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,  
EXCEPTIONS TO TRIAL EXAMINER'S REPORT, and  
BRIEF IN SUPPORT OF EXCEPTIONS.**

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Counsel for Respondent Local Union 349, International Brotherhood of Electrical Workers, AFL-CIO, pursuant to Section 102.46 of the Rules and Regulations of the Board, Series 8, as amended, excepts to the following findings of fact, conclusions and recommendations of the Trial Examiner, as set forth in the Intermediate Report and Recommended Order dated August 21, 1963:

The following symbols prevail:

IR = Intermediate Report of the Trial Examiner.

TR = Transcript of Testimony at the hearing.

EXCEPTION 1: To the Trial Examiner's finding that it was regarding the Miami Laundry job about which Apte spoke to Finn. (IR 4, L. 37-41).

EXCEPTION 2: To the Trial Examiner's consideration of the statement of Apte to Finn to the effect that IBEW would walk, and to the Trial Examiner's finding that such statement was controlling, and the effect given to the statement that thereafter Apte acted carefully but illegally and that Apte had a duty to disavow this statement to Finn some time after it was made. (IR 5, L. 27-30; IR 20, L. 22-26; IR 26, L. 51-57).

EXCEPTION 3: To the Trial Examiner's finding that IBEW men will work when told to and not work when told to, or the inference that when they do not work, that this means they were told not to work. (IR 5, L. 21-24).

EXCEPTION 4: To the Trial Examiner's finding that a foreman acts like any other member or to the inference from this that there is any Union responsibility for this action. (IR 6, L. 46-55).

- EXCEPTION 5: To the Trial Examiner's admission of Logan's statements to witnesses into the record, and to the consideration of these statements as showing Union responsibility. (IR 6, L. 1-4; IR 7, L. 33-38; IR 22, L. 52-55).
- EXCEPTION 6: To the Trial Examiner's finding that McLain asked the employer to send a sound man and to the inferences that it showed McLain was attempting to protect the Union's jurisdiction over all work that it claimed. (IR 8, L. 37-44).
- EXCEPTION 7: To the Trial Examiner's finding that the testimony of Statcavage and MacMillan with reference to the Village Green Crown Lanes job is accurate. (IR 10, L. 11-13).
- EXCEPTION 8: To the Trial Examiner's finding that Disney said there would be a work stoppage, with reference to the Miami Laundry job. (IR 10, L. 31-33; IR 11, L. 11-15).
- EXCEPTION 9: To the Trial Examiner's finding that the testimony regarding the affidavit of Statcavage was not easy to evaluate. (IR 11, L. 28-29).
- EXCEPTION 10: To the Trial Examiner's finding that the description of the two conversations, as related by MacMillen and Statcavage is accurate. (IR 11, L. 33-35).
- EXCEPTION 11: To the Trial Examiner's finding that the testimony of Statcavage and MacMillen about their activity on the Miami Laundry job is consistent with what was done on other jobs. (IR 11, L. 35-38).
- EXCEPTION 12: To the Trial Examiner's finding that Laschower had no earlier problem about working on the job with or claiming the work of CWA telephone men installing the switchboard, and to the consideration of this fact as in some way binding on the Union. (IR 12, L. 45-46).

- EXCEPTION 13:** To the Trial Examiner's admission into evidence of statements Laschower made to witnesses, to its acceptance as binding on the Union, and to the consideration of these statements in reaching conclusions. (IR 12, L. 10-17; IR 13, L. 27-31; IR 14, L. 40-44; IR 15, L. 28-33; IR 15, L. 39-40; IR 15, L. 51-60).
- EXCEPTION 14:** To the Trial Examiner's finding that the testimony of Mahieu and Herold were acceptable and credited over Laschower's. (IR 12, L. 42-44).
- EXCEPTION 15:** To the Trial Examiner's crediting of Oliveira and Herold's testimony over Laschower's. (IR 15, L. 36).
- EXCEPTION 16:** To the Trial Examiner's finding that for some reason Laschower changed his position and agreed to work with Dade Sound and that this reason was the promise of others to pay his fine, and to the admission of such testimony into evidence, and to the consideration of such testimony. (IR 15, L. 39-40; IR 16, L. 1-4).
- EXCEPTION 17:** To the Trial Examiner's admission into evidence of Sullivan's testimony that Harrison had been told not to work with Dade and to any consideration of this testimony as binding on the Respondent. (IR 17, L. 20; IR 18, L. 32-37; IR 30, L. 13-15).
- EXCEPTION 18:** To the Trial Examiner's finding that Sullivan's entire credibility was not destroyed. (IR 17, L. 58-59).
- EXCEPTION 19:** To the Trial Examiner's finding that Taylor was not convincing when he testified he felt he had a responsibility to check cards in order to find out who the two new men were, and to the finding that he did not know anyone else on the job, and that he checked only the Dade Sound Employees' cards. (IR 18, L. 3-4-5; IR 30, L. 17-19).

- EXCEPTION 20:** To the Trial Examiner's admission of the conversations into the record, and to its consideration as binding on the Union that Taylor told Harrison that "they were on the job" and that the appearance of the Dade employees on the job was not a new and completely unexpected situation. (IR 18, L. 12-13; IR 18, L. 32-37).
- EXCEPTION 21:** To the Trial Examiner's finding that the Union's testimony showed a lack of interest and activity in the Union's jurisdiction, and that this was not typical, and the inference drawn by the Trial Examiner that this is not to be credited. (IR 20, L. 43-45).
- EXCEPTION 22:** To the Trial Examiner's finding that the Union professed ignorance and indifference to both the matter of Dade's jurisdictional encroachment and walkout activity. (IR 20, L. 50-54).
- EXCEPTION 23:** To the Trial Examiner's consideration of the Union's Constitution and By-Laws provisions which were not offered in evidence. (IR 20, L. 50-54; IR 21, L. 1-3; IR 21, L. 27-38; IR 27, L. 57-64).
- EXCEPTION 24:** To the Trial Examiner's finding that the stewards played a greater role than is shown by Respondent's testimony. (IR 21, L. 7-12).
- EXCEPTION 25:** To the Trial Examiner's finding that the Union had a responsibility and a duty to discipline its members who quit work or who threatened to so quit. (IR 21, L. 18; IR 27, L. 33-40; IR 28, L. 2-9).
- EXCEPTION 26:** To the Trial Examiner's finding that Albury regarded work stoppages as normal and accepted practice. (IR 22, L. 10-12).
- EXCEPTION 27:** To the Trial Examiner's finding that men would follow when the steward would walk off the job. (IR 22, L. 46-49).



- EXCEPTION 28:** To the Trial Examiner's finding that McLain was a participant in a failure to work on September 13th and 14th, and that he triggered the walkouts. (IR 22, L. 56-57; IR 29, L. 49-50).
- EXCEPTION 29:** To the Trial Examiner's characterization of McLain's statement to Burns as a warning implying a threat. (IR 23, L. 1-3).
- EXCEPTION 30:** To the Trial Examiner's finding that McLain told Statcavage that if he left the job the men would follow, and that the Union is bound by such statement. (IR 23, L. 3-5).
- EXCEPTION 31:** To the Trial Examiner's finding that IBEW sound men were sent to the Miami Laundry job by someone who was confident that there would be trouble. (IR 23, L. 15-35).
- EXCEPTION 32:** To the Trial Examiner's finding that over many months on a variety of different construction projects all of Respondent members refused to work. (IR 25, L. 33-38).
- EXCEPTION 33:** To the Trial Examiner's finding and conclusion that the individual standard of not working with non-union men is the same in this case as in cases where the individual philosophy was nurtured and existed by reason of Union rules. (IR 26, L. 6-9).
- EXCEPTION 34:** To the Trial Examiner's finding that the Respondent's awareness of the situation required it to take action. (IR 26, L. 34-57; IR 27, L. 1-24).
- EXCEPTION 35:** To the Trial Examiner's finding and consideration of the charge filed in May as being a part of the unfair labor practices in this case, and to its consideration to show awareness and Union responsibility, and to the finding that the posting of notices in some way made the Union responsible for the alleged unfair labor practices in this case. (IR 26, L. 45).

- EXCEPTION 36:** To the Trial Examiner's finding that the series of work stoppages required the consent of Local 349. (IR 27, L. 19).
- EXCEPTION 37:** To the Trial Examiner's finding that Respondent acquiesced in the work stoppages and other alleged illegal conduct, and the finding that Respondent's officials did not effect a withdrawal and disavowal of the Union from responsibility for the conduct. (IR 27, L. 27-31).
- EXCEPTION 38:** To the Trial Examiner's finding that Apte and Albury were engaged in transparent gestures and that their remarks were meaningless and were not followed, and that they had a duty and/or responsibility to replace their members on the job. (IR 28, L. 50-55).
- EXCEPTION 39:** To the Trial Examiner's finding that Laschower was his own steward. (IR 30, L. 3-5).
- EXCEPTION 40:** To the Trial Examiner's finding that on the Publix job the steward threatened to walk out, and that he did not disavow or that he was required to disavow the statement that the rest of the electricians will follow. (IR 30, L. 7-11).
- EXCEPTION 41:** To the Trial Examiner's finding that the electricians in some unexplained way knew that they should walk off the job. (IR 30, L. 19-21).
- EXCEPTION 42:** To the Trial Examiner's finding and conclusion that Respondent engaged in a strike on the Village job on September 13 and 14 of 1962, and that Respondent induced and encouraged individuals not to work on said job on said days; and that Respondent threatened, restrained and coerced Flink, Coker, Burns and Village. (IR 30, L. 25-39).

- EXCEPTION 43:** To the Trial Examiner's finding that Respondent engaged in a refusal to work on the Miami Laundry job in September, 1962, and that Respondent induced Diaz to refuse to work on that job, and that Respondent threatened, coerced and restrained Coker, O'Donovan and Miami Laundry. (IR 30, L. 41-55).
- EXCEPTION 44:** To the Trial Examiner's finding that Respondent engaged in a refusal to work on January 17, 21 and early February, 1963, and that Respondent threatened, restrained and coerced Electronic, Lincoln National, Kammer and Arkin. (IR 30, L. 57-58; IR 31, L. 1-9).
- EXCEPTION 45:** To the Trial Examiner's finding and conclusion that Respondent, on February 4, 1963, on the Publix job, engaged in a refusal to work, and that their steward, Stamp, induced and encouraged individuals employed by Kammer to strike and refuse to work, and that Respondent threatened, restrained and coerced Publix, Coker and Kammer. (IR 31, L. 11-24).
- EXCEPTION 46:** To the Trial Examiner's finding and conclusion that on February 6th to 11th, February 19th, March 4th to 8th, 1963, at Pan-American, Respondent engaged in a refusal to work with Dade or to recognize the right of Dade to perform sound work, and that Respondent induced and encouraged individuals employed by Kammer not to work, and that Respondent threatened, restrained and coerced Pan-Am, Coker and Kammer. (IR 31, L. 26-40).
- EXCEPTION 47:** To the Trial Examiner's finding and conclusion that all of the alleged illegal conduct was engaged in to force or require the contractors or other persons to cease doing business with Dade. (IR 30, L. 36-38; IR 30, L. 52-54; IR 31, L. 7-8; IR 31, L. 22-23; IR 31, L. 38-39).

- EXCEPTION 48:** To the Trial Examiner's finding that the remedy recommended by the Trial Examiner is appropriate for this case. (IR 32, L. 12-19).
- EXCEPTION 49:** To the Trial Examiner's conclusion of law that the Respondent is engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i)(ii)(B) of the Act. (IR 32, L. 27-29).
- EXCEPTION 50:** To the Trial Examiner's recommendations in their entirety. (IR 32, L. 33-59; IR 33, L. 1-32).
- EXCEPTION 51:** To the Trial Examiner's failure to exclude testimony of witnesses relating statements of foremen and other members of Respondent Union, which testimony was admitted over objection made by Respondent's counsel. (Tr. pgs. 106, 134, 165, 166, 220, 228, 263, 319, 493).
- EXCEPTION 52:** To the Trial Examiner's failure to strike all hearsay testimony and the testimony of foremen on motions by Respondent. (Tr. pgs. 134, 228).
- EXCEPTION 53:** To the Trial Examiner's failure to dismiss the case upon motion made by Respondent at the conclusion of the General Counsel's case and renewed at the conclusion of the hearing. (Tr. pgs. 353, 498).

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[Certificate of Mailing]

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D-6461  
Miami, Fla.

### DECISION AND ORDER

On August 21, 1963, Trial Examiner Ramey Donovan issued his Intermediate Report in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case, and hereby adopts the findings,<sup>1/</sup> conclusions, and recommendations of the Trial Examiner except as modified herein.

#### Background

The Charging Party, hereinafter referred to as Dade, a contractor for the installation of sound amplification equipment, performs work in Miami, Florida, and vicinity. In December 1961, Dade signed a collective-bargaining agreement with Local 3107, Communication Workers of

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<sup>1/</sup> The Respondent excepted to a number of the Trial Examiner's findings as to the credibility of witnesses. However, it is well established that the Board will not overrule a Trial Examiner's resolutions of credibility unless a clear preponderance of all the relevant evidence convinces the Board that such resolution was incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3). As no such conclusion is warranted in this case, we adopt the Trial Examiner's credibility findings.

Respondent further contends that the Board should refuse to uphold the Trial Examiner's findings herein on the ground that in making findings of credibility, in drawing inferences and evaluating the evidence, he showed bias against Respondent. Upon careful examination of the entire record and the Intermediate Report, we are satisfied that the contentions of the Respondent in this regard are without merit.

America (hereinafter referred to as CWA). Its two employees, MacMillan and Oliveira, were members of that union.

The installation work performed by Dade is also within the claimed work jurisdiction of Respondent (sometimes referred to herein as IBEW). The record shows that the assignment of such work has been the subject of a dispute between IBEW and CWA, from a time antedating the incidents which gave rise to the charges in the present case. Thus, sometime in May 1962, while Dade was installing sound equipment at a site where members of Respondent were also employed, Apte, a business agent of Respondent, spoke to Finn, the director of Local 3107, CWA, about CWA personnel working alongside the IBEW members. Apte advised Finn that if Finn did not remove the CWA members, his (Apte's) men "would be walking."

About the same time, Dade filed a charge against Respondent accusing it of violating Section 8(b)(4)(i)(ii)(B) of the Act. A complaint based on that charge issued on June 22, 1962 (Case No. 12-CC-223), and it alleged, inter alia, that Respondent, through its business agent, Apte, and others, had threatened the Miller Electric Company at its Miami University Library building project, and had also induced employees of Miller to strike, in order to force Miller to cease doing business with Dade. On August 9, 1962, all parties entered into a Settlement Stipulation in that case providing for a cease and desist order based on the violations alleged. The Stipulation was approved by the Board and a decree was entered by the Fifth Circuit Court of Appeals on October 17, 1962, enforcing the Board's Order.

The complaint in the present case alleges that Respondent, confronting Dade at five different construction sites in the vicinity of Miami, Florida, between September 1962 and March 1963, violated Section 8(b)(4)(i)(ii)(B) of the Act by inducing employees of various employers to strike, and by threatening these employers, in each instance with an object of forcing them to cease doing business with each other or with Dade.

The Trial Examiner, on the basis of statements by Respondent's business agent, Apte, in May 1962, and other factors, found that Respondent was committed to a course of conduct to protect its work jurisdiction

from any encroachment by Dade's CWA employees. He further found that at those sites involved herein at which Respondent's stewards were present, stewards, acting as Respondent's agents, threatened the employers or induced their employees to strike with an object of forcing them to cease doing business with Dade. He also found that at the same sites, as well as at others at which Respondent had no steward or other agent, Respondent variously engaged in strikes or refusals to work, or induced its members to engage in strikes or refusals to work, with the same "cease doing business" objective, by "acquiescing in, tolerating, failing to take effective measures to prevent and ratifying a code of conduct by its members not to work with people [Dade's CWA crew] regarded as nonunion." Based on these findings, the Trial Examiner concluded that Respondent violated Section 8(b)(4)(i)(ii)(B) at all five sites.

Respondent contends that it is not responsible for the actions of its stewards or members at any of these sites because the stewards and members were acting as individuals and not on behalf of Respondent. It further contends that it has not ratified such conduct.

Although we agree with certain of the Trial Examiner's ultimate findings of violation of the Act, we do not, as a basis for our findings, adopt or rely upon his reasoning which imputes responsibility to Respondent on the theory that Respondent "acquiesced in, tolerated, failed to take effective measures to prevent, and ratified a code of conduct by its members not to work with people regarded as nonunion." The grounds on which we rest our findings, as related to each job site, are set out below:

#### 1. The Village Green Crown Lanes Job

During the summer of 1962, Village Green Crown Lanes contracted for the construction of a number of bowling alleys and hired J. M. Coker, Inc., to install the internal communications. Coker subcontracted some of this work to Dade. Burns & Yaeger (herein called Burns) was the electrical subcontractor for the same job, and its electricians were members of Respondent.

Statcavage (also called Stack), Coker's representative, and MacMillan, Dade's employee, went out to the site on July 27, 1962.<sup>2/</sup> They were eventually confronted by Respondent's steward, McLain, and Logan, the Burns foreman. McLain, on learning that MacMillan was a CWA member, advised Stack that MacMillan "just can't work out." At Stack's request to check the matter further, McLain went to a telephone, apparently made a call, hung up, and returned. Stack asked McLain what the "scoop was," to which McLain replied, "You'll find out." Shortly afterwards, McLain, Logan, and all the electricians, members of Respondent, walked off the job. McLain admitted at the hearing that his action in quitting work resulted from the fact that the IBEW crew employed by Burns had not been assigned the sound installation work, which was to be done by Dade. McLain also admitted that he had met MacMillan at the aforementioned Miami Library project the previous spring and had walked off that site when he learned that MacMillan was a CWA member performing work in Respondent's jurisdiction.

On July 28, McLain continued to stay away from the Village Green project and instead went down to Respondent's hall. There he was told his continued absence from the job might result in his replacement. He thereupon decided to return to work. On his way back to Village Green, he passed a restaurant where four or five of the electricians were eating. On learning that he was returning to the project, they also decided to return. Because of the difficulty caused by this walkoff, Stack took away Dade's work and reassigned it to Burns. In early August, McLain again spoke to Stack and said that walking off a job rather than work with

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<sup>2/</sup> As the events which occurred in July and August of 1962 took place prior to the 6-month limitation period set by Section 10(b) of the Act, we do not hereinafter make any findings of unfair labor practices based on these events. We set them forth here, however, because of the background light they shed upon the meaning and significance of the incidents which occurred at this site on September 13 and 14, 1962, well within the 10(b) period, and particularly upon the Union's part in, and responsibility for, those incidents. Local Lodge 1424 etc. et al. v. N.L.R.B. (Bryan Mfg. Co.), 362 U.S. 411, 416.



"nonunion" employees<sup>3/</sup> was a personal matter with him but that if he did, the other men would follow suit.

Burns performed part of the work originally assigned to Dade but due to the resulting higher costs, Stack reassigned the job to Dade in September. Shortly before noon, on September 13, 1962, Stack and the Dade employees, MacMillan and Oliveira, came on the site. Stack told Burns' foreman, Logan, that the Dade employees were about to work. After lunch, all of the electricians, members of Respondent, including steward McLain and foreman Logan, walked off the site and remained away for the balance of the day and all of the next. Burns, the employer of the electricians, did not authorize their absence from work at this time or on July 27 and 28.

It is clear that McLain was Respondent's agent at the site, and we so find.<sup>4/</sup> We reject Respondent's contention that McLain acted as an individual. McLain's admonition to Stack in August that other electricians would join him in a walkoff to protest the presence of "non-union" employees at the site was a thinly disguised threat that he, as Respondent's agent, could act as an instrument of Respondent's power to bring about a strike if the need arose. The prior events of July demonstrating the adherence of Respondent's members to McLain's leadership made it clear that this threat was not an idle one. Thus, after McLain had

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<sup>3/</sup> McLain considered CWA members to be "nonunion" employees.

<sup>4/</sup> McLain possessed the title of job steward, was appointed as such by the Respondent, was required under its bylaws to report any encroachment upon its claimed jurisdiction, and, as admitted by Respondent's counsel at the hearing, was obliged under its constitution and bylaws to enforce compliance with its work rules. All Respondent's stewards, as admitted by business agents Apte and Albury at the hearing, are required to straighten out all "problems" on the job on their own initiative. As more fully set forth in the Intermediate Report, the record indicates that McLain was looked upon by management and employees alike as Respondent's representative at that project. Local 825, IUOE (Nichols Electric Co.), 138 NLRB 540, 542-543, enforcement denied on other grounds, 326 F.2d 218 (C.A. 3); Mach Lumber Co., 126 NLRB 297, 304.

objected to the presence of a CWA member at the site and had himself walked off on July 27, the rest of the IBEW electricians quickly followed suit. Seeing McLain return the next day, they likewise returned without question. These facts also indicate in our opinion, contrary to other contentions of Respondent, that at pertinent times herein its members at this site acted in response to the leadership of the union representative.<sup>5/</sup>

Although there is no direct evidence that McLain requested the employees to strike on September 13, the sequence of events on that day followed the same pattern as the incident of July 27. When Dade's CWA employees came on the site, they were immediately confronted by Logan, who inquired if they were going to perform sound work. Hearing an affirmative answer, he left the site with Respondent's other members, including McLain. When these circumstances are considered against the background of McLain's threat to Stack in August, the incidents of July 27 and 28 and the prior history of Respondent's opposition to the performance by Dade's CWA employees of work in Respondent's claimed jurisdiction, we believe the inference is inescapable that Respondent, through its agent McLain, caused the strike of its members at the Village Green site when Dade showed up to perform sound work on that job. These same factors reflect that the object of the strike was to bring indirect pressure on Coker, through Burns and Village Green Crown Lanes, to force and require Coker to cease doing business with Dade. Accordingly, we conclude that, on September 13 and 14, 1962, Respondent, through its agent, McLain, violated Section 8(b)(4)(i)(ii)(B) of the Act at the Village Green jobsite.<sup>6/</sup>

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<sup>5/</sup> In rejecting Respondent's contention that McLain was acting only as an individual, and not in his capacity as job steward, we deem it significant that he made no effort to advise Respondent's members at the site that he was acting as an individual, nor is there any showing that he gave them permission to stay or leave as each of them might have seen fit.

<sup>6/</sup> Local 3, IBEW (New York Telephone Company), 140 NLRB 729, 740 enfd. 325 F.2d 561 (C.A. 2); Local Union 825 IUOE (Carleton Brothers Company), 131 NLRB 452, 455.

### The Miami Laundry Job

During September, a building was being constructed or renovated for the Miami Laundry and Dry Cleaning Co. Coker received a sound contract from Miami Laundry, and Coker subcontracted the labor for this work to Dade. R. L. O'Donovan was the electrical subcontractor at the site and his employees were members of Respondent.

In late September, Stack and MacMillan came on the site and spoke to Diaz, who was O'Donovan's foreman, and to Disney, Respondent's steward. After checking the union card of MacMillan and establishing that the latter was a CWA member, Disney advised Stack in the presence of Diaz that he, Disney, could not work with Dade. He also told Stack at this time that Respondent had its own people who did sound work, and that if MacMillan came on the job, there would be a work stoppage. Later that day Stack reassigned Dade's sound installation work to O'Donovan.

We conclude that Disney was Respondent's agent.<sup>7/</sup> Respondent does not deny his status of agent, but urges that in speaking to Stack, as recounted above, he was acting as an individual and not in his appointed role of union steward. We reject this contention. While Disney's comment that he would not work with Dade may have reflected his own purely personal feelings in the matter, his further statement about a work stoppage went beyond any individual considerations. That statement was, in our opinion, a clear threat to use his authority as steward to lead a strike of Respondent's members at the site, if Dade performed the sound work. Based on his other comment that Respondent had members of its own who performed this work, it is clear that Disney's purpose in making this threat was to force Coker to cease doing business with Dade and reassign the sound work to a firm employing Respondent's members. Moreover, the threat succeeded in this objective. Accordingly, we conclude that Respondent, by the threat of its agent, Disney, violated Section 8(b)(4) (B) of the Act.

<sup>7/</sup> See footnote 4, *supra*.

<sup>8/</sup> Local 28, International Stereotypers and Electrotypers Union of North America (Capital Electrotpe Company, Inc.), 140 NLRB 480, 484.

### The Publix Warehouse Job

Publix Markets, Inc., was having a warehouse built in February 1963. Publix assigned its sound and communication work to Coker, which subcontracted certain installation work to Dade. Kammer & Wood, which employed members of Respondent, was the electrical contractor.

Stack, Dade's MacMillan, and Oliveira went to the jobsite on February 4. Stamp, Respondent's shop steward for Kammer & Wood, approached them and asked to see the union cards of MacMillan and Oliveira. After seeing that their cards had been issued by CWA, Stamp walked away and sought out Goldsmith, the Publix construction superintendent. Stamp told Goldsmith that CWA men were doing the sound work on the job, that he thought the sound work should be done by IBEW members and that he would not work with CWA men. In a later conversation on the same day in the presence of Stack and Oliveira, Stamp repeated that if the CWA men came on the job, he would have to leave. Stack, MacMillan, Stamp, and Goldsmith then went to find Newsom, the chief Publix official at the jobsite. Stamp told Newsom that Respondent had unemployed members who could and should do the work. He said his feelings were personal and that he could not work with anyone not referred through the hall. Goldsmith then observed, "If that man [goes] all the other electricians will go, they will get sick, they will start dropping like flies and then leave." Newsom then turned to Stamp and asked him if Goldsmith was right, to which Stamp replied, "That's right, as far as I know it probably is, but I don't know exactly what they will do." Thereafter, Dade's assignment at the Publix job was taken away and given instead to Dick Williams Sound, Inc., which employed Respondent's members.

We conclude that Stamp was an agent of Respondent at the site.<sup>9/</sup> We further conclude, under all the circumstances, that his several statements that he would not work with CWA personnel were an undisguised threat to lead a walkoff of Respondent's members from the site. Goldsmith so understood them, and Stamp specifically confirmed that understanding. For these same reasons, we reject Respondent's contention

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<sup>9/</sup> See footnote 4, supra.



that Stamp spoke as an individual rather than as a job steward. We also find, on the basis of the other comments by Stamp in the presence of representatives of the various employers at the site, that the purpose of his threats was to force and require Coker to cease doing business with Dade. Moreover, these threats succeeded in that objective.

Accordingly, we find that by the aforesaid conduct, Respondent through its agent, Stamp, violated 8(b)(4)(ii)(B) on February 4, 1963, by threatening and coercing the employers at the site, particularly Coker, with an object of forcing these employers to cease doing business with Dade.<sup>10/</sup> We likewise conclude that Respondent, by the refusal of its agent, Stamp, to perform services, has also thereby violated Section 8(b)(4)(i)(B) of the Act.

#### The Pan American Hospital Job

In the early part of 1963 the Pan American Hospital was being constructed. The electrical subcontractor was Kammer & Wood, Inc. (Kammer), which employed members of Respondent. Pan American gave the sound and communication work to Coker and Coker, in turn, reassigned certain installation work to Dade.

Dade's MacMillan and Oliveira came to the site on February 6, 1963. Taylor, a journeyman electrician and a member of Respondent, promptly confronted them and asked to see their union cards<sup>11/</sup> in the same manner as Respondent's members or stewards had done at other project sites. Learning that MacMillan and Oliveira were CWA men, Taylor sought out Harrison, the Kammer foreman, who was also a member of Respondent. Harrison was speaking with Coker's Stack when

<sup>10/</sup> Local 28, International Stereotypers and Electrotypers Union of North America (Capital Electrotype Company, Inc.), supra; Cuyahoga, Lake, Geauga and Ashtabula Counties Carpenters District Council, etc., et al. (The Berti Company), 143 NLRB 872.

<sup>11/</sup> We correct the Trial Examiner's finding that Taylor only checked cards of Dade's CWA employees at this site. The record reflects that Taylor also checked the CWA cards of RCA employees doing work on this project.

Taylor found him. Taylor told Harrison, in Stack's presence, that "they" were on the job, that "we" do not recognize their jurisdiction and that "we" had better check. Harrison left Stack and called the Respondent's hall. He returned and stated he was unable to reach anyone. Harrison checked the card of either Oliveira or MacMillan on this occasion. Everyone then went to lunch. After lunch, all of the electricians, including Harrison, left. They remained away from the job for the next two and a half days.

Harrison and two or three others went to Respondent's hall on February 7 and told business agent Albury what had transpired the previous day. Albury, according to Harrison, told them only to go back to work. There is no evidence, however, that they returned to work until the following Monday, February 11.

MacMillan and Oliveira returned to this job on February 19, and again Respondent's electrician members walked off. Thereafter, for a time, an arrangement was made among Stack, Brush, Kammer's work superintendent (also a member of Respondent), and Sullivan, an electrical engineer, that MacMillan and Oliveira would work only evenings and the electricians would work during the day.

However, on March 4, MacMillan and Oliveira came to work during the day and worked most of that week. All of Respondent's electrician members, including Harrison, again walked off, working only 10 hours during the entire week - 7 hours on March 4, and 3 hours on March 5. They remained away from the job all day on March 6, 7, and 8, 1963, even though work remained to be done by Kammer at the site. Kammer did not authorize Respondent's members to be away from the site any of those days.

Charges having been filed by Dade, a Section 10(1) injunction hearing was held in the U. S. District Court on March 7, and an injunction was issued on March 8. On March 11, a new crew of electricians was sent by Respondent and commenced work on the job. Members of the previous crew were sent by Kammer to another job.

While the record does not disclose that any steward or other agent of Respondent actually led or participated in the various stoppages by its members at the Pan American job in February and March of 1963, we conclude, nonetheless, that Respondent induced and encouraged its members to take such action.

It is well established that inducement may take many forms,<sup>12/</sup> and it is not limited to such obvious acts as direct orders, threats, or promises of benefit by union officials to the rank and file. An appeal by a union to its members to protect its work jurisdiction is also a form of inducement.<sup>13/</sup> Although there is no evidence that Respondent made a direct appeal in this regard to its members at this site, the often-voiced opposition of its agents to, and the example of its stewards and members striking in protest of, Dade's performance of sound work at other sites had the same effect.<sup>14/</sup> Thus, as recounted above, on some four or five occasions at various construction jobs prior to the first incident at the Pan American site, Respondent's stewards or its business agent made it clear that they strenuously objected to Dade's CWA employees performing work in Respondent's claimed jurisdiction and that work stoppages by Respondent would result if such work were not taken away from Dade and its CWA personnel. On at least three prior occasions during this same period, stoppages in fact resulted over this same dispute. From the frequency of these incidents, we think it manifest that all of Respondent's members were well aware of their union's feelings as to Dade's CWA crew and the interest in protecting Respondent's work jurisdiction which underlay such feelings.<sup>15/</sup> The incidents at the Pan American

<sup>12/</sup> IBEW et al v. N.L.R.B., 341 U.S. 694, 701-702.

<sup>13/</sup> See Local 598, U.A. (McDonald Scott & Associates), 131 NLRB 787; Local 3, IBEW (Western Electric Company, Inc.), 141 NLRB 888, 893.

<sup>14/</sup> Local 28, International Stereotypers and Electrotypers Union of North American (Capitol Electrotpe Company, Inc.), *supra*; IBEW et al (The Martin Co.), 131 NLRB 1000, 1017.

<sup>15/</sup> Id.

site further bear out this conclusion. Thus, Taylor, a rank and file member, promptly confronted Dade's MacMillan and Oliveira when they first came to the Pan American site in February and asked to see their union cards. Learning that they were CWA members, he quickly informed Harrison of their presence and advised Harrison of his own understanding that Respondent did not recognize CWA's jurisdiction. Harrison checked the card of MacMillan or Oliveira and tried to call Respondent's hall. Even though he was unable to reach anyone there and even though it appears that no other member present did so, he and all the other members walked off the site shortly thereafter. On at least two subsequent occasions at this site, Respondent's members, confronted by Dade's CWA personnel coming on to the site, repeated this performance. When asked to explain their actions at the hearing, Taylor and Harrison testified that they had sought to protect Respondent's work jurisdiction, viz., they would not work alongside CWA employees who were doing work in Respondent's claimed jurisdiction, particularly at a time when Respondent's members were out of work.<sup>16/</sup> On the basis of all the foregoing, particularly when considered against the background of Respondent agents' conduct in connection with the related work stoppages over this same dispute between Respondent and Dade, we conclude that Respondent is also responsible for the strike at the Pan American site.

We conclude, therefore, in the circumstances of this case, that Respondent was responsible for the work stoppages at this site<sup>17/</sup> and that

<sup>16/</sup> Harrison further testified that Naiman, another rank and file member at the Pan American site, gave the same reason when he walked off on one occasion.

<sup>17/</sup> Member Fanning and Member Jenkins dissent from this finding. They cannot agree that Respondent must be held accountable for the conduct of its members solely on the ground that the evidence establishes that authorized agents of Respondent induced work stoppages at other locations. The inference that Respondent, in fact, caused a work stoppage at the Pan American Hospital job is equally warranted with respect to the incident at Lincoln National Life, which involved the same dispute between Respondent and Dade. There, however, the Board majority finds that Respondent is not responsible for the threats of one of its members even though these threats are against the background of other threats of Respondent's agents at other locations.



an objective of such stoppages was to force and require Coker to cease doing business with Dade.<sup>18/</sup> Accordingly, we find that Respondent thereby violated Section 8(b)(4)(i)(ii)(B) of the Act.

#### The Lincoln National Life Job

The Lincoln National Life project involved the construction of an office building. Lincoln awarded the sound and communication work to Electronic Wholesalers, Inc., which in turn contracted certain of the sound installation work to Dade. The electrical subcontractor was Kammer & Wood who assigned an electrician named Laschower and occasionally a helper to perform its work at the site.

The complaint alleged that Respondent by its officers and agents, including Laschower, by informing various employers at the Lincoln project that Respondent would not work with Dade at that site, threatened, coerced, and restrained these employers with an object of forcing them to cease doing business with Dade.

On January 17, 1963, and again on January 21, 1963, Laschower, when confronted by the Dade CWA personnel coming on the site, threatened officials of other employers that he would leave the site, stating that he could not work with the Dade employees because he considered them to be nonunion.<sup>19/</sup> Laschower's statements resulted in the removal of the Dade employees from the site on both occasions.

The Trial Examiner concluded that Laschower was a steward and that Respondent, by the foregoing threats of Laschower, violated Section 8(b)(4)(B) of the Act. Respondent excepted to these findings, and we find merit in these exceptions.

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<sup>18/</sup> See Local 598, UA (McDonald Scott & Associates), supra; Local 3, IBEW (Western Electric Co., Inc.), supra.

<sup>19/</sup> It does not appear that Laschower ever carried out any of his threats to leave the Lincoln site. His only recollection of any absence from this job was when he was sent by Kammer to another project for about a day shortly after the incident of January 17. The testimony of other witnesses did not contradict Laschower's recollection on this point.

Contrary to the Trial Examiner, we do not believe that the evidence supports the conclusion that Laschower was a steward. Laschower testified that he had never been appointed to that position and his testimony was not rebutted nor was it discredited by the Trial Examiner. While it appears that Respondent's constitution and by-laws provided for automatic appointment of the senior journeyman at the site as steward, in the event the Union made no formal appointment of one, Apte gave unrebutted testimony that the automatic appointment system had not been followed for a number of years.

We find, therefore, that Laschower was not a steward and that Respondent is not responsible on such basis for his several threats to walk off the site. Accordingly, we shall dismiss that part of the complaint which alleges that Respondent violated Section 8(b)(4)(B) of the Act at the Lincoln National Life Project.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Local 349, International Brotherhood of Electrical Workers, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Engaging in or inducing or encouraging any individual employed by Burns & Yaeger, Kammer & Wood, Inc., R. L. O'Donovan, or by any other employer, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require J. M. Coker, Inc., or any other person engaged in commerce or in an industry affecting commerce, to cease doing business with Dade Sound and Controls.

(b) Threatening, restraining, or coercing Burns & Yaeger, Kammer & Wood, R. L. O'Donovan, Richard S. Flink, Inc., J. M. Coker, Inc., Village Green Crown Lanes, Inc., Miami Laundry and Dry Cleaning

Respondent is bound by their conduct;

And it appearing further that the title "job foreman" is one which is more typically indicative of employer agency, rather than of union agency;

Now, therefore, it is hereby ORDERED that the General Counsel supply to Respondent on or before Friday, April 26, 1963, a further and more particular statement of the facts upon which he relies to support the complaint allegations that the job foremen were officers and or agents of Respondent or the manner by which Respondent otherwise became bound by their conduct as alleged in the complaint.

In all other respects the motion for bill of particulars is denied.

The motion to strike the complaint is also hereby denied.

/s/ George A. Downing  
Trial Examiner

Dated: April 23, 1963

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G.C. Exhibit 1(z)

**RESPONSE TO TRIAL EXAMINER'S ORDER  
FOR BETTER BILL OF PARTICULARS  
DATED APRIL 23, 1963**

Now comes General Counsel's response to Trial Examiner's Order dated April 23, 1963, and to the previous Orders of the Trial Examiner to furnish Bill of Particulars as follows:

The job foreman was, in each case, a member of Respondent union and was cloaked with such authority by Respondent as to constitute him

an agent of the Respondent union. On the Lincoln Life job the foreman was the only representative of Respondent union on the job, there being no steward present. On the Publix, Pan American, Laundry, and Bowling jobs, the Respondent's job steward ratified the action and statements of the job foreman by failing to disavow, repudiate or give any contrary instructions.

With respect to the other Particular sought by Respondent in its prior Motions, General Counsel presently has no other or further information.

DATED at Tampa, Florida, this 24th day of April, 1963.

/s/ James L. Jeffers  
Counsel for the General Counsel  
National Labor Relations Board  
Twelfth Region  
112 East Cass Street  
Tampa 2, Florida

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# GENERAL COUNSEL'S EXHIBIT NO. 3

R. L. O'DONOVAN, INC.

## LABOR ANALYSIS

M/AM/ LAUNDRY - JOB # 4655

91-92

Week Ending SEPT. 10, 1962 TO SEPT. 26, 1962

EMPLOYEE	DATE WEEK	SEPT. 10, 1962	SEPT. 11, 1962	SEPT. 12, 1962	SEPT. 13, 1962	SEPT. 14, 1962	SEPT. 15, 1962	SEPT. 16, 1962	SEPT. 17, 1962	SEPT. 18, 1962	SEPT. 19, 1962	SEPT. 20, 1962	SEPT. 21, 1962	SEPT. 22, 1962	SEPT. 23, 1962	SEPT. 24, 1962	SEPT. 25, 1962	SEPT. 26, 1962	SEPT. 27, 1962	SEPT. 28, 1962	TOTALS
CLINTON OWENS	9	6	6 1/2	7	9	16	5 1/2	7	-	2 1/2	7	-	-	-	-	2	6	5			
RUDY CIELO	-	6	10	10	10	16	8	8	8	8	-	-	-	-	-	-	-	-			
EMELIO DIAZ	10	10	10	10	10	16	8	8	8	8	8	16	16	8	8	8	8	8			
RANDALL WARREN	10	10	10	10	10	16	8	8	8	8	8	-	-	8	8	8	8	8			
ROBERT JAWORSKI	10	10	10	10	10	16	8	8	8	8	8	-	16	8	8	8	8	8			
LARRY BARTON	10	10	10	10	10	16	8	8	8	8	8	-	16	8	8	8	8	8			
HARRY DISNEY	10	10	10	10	10	16	8	8	8	8	8	-	16	8	8	8	8	8			
JOHN OWENS	-	1	-	-	-	16	-	-	1	4	8	-	-	8	-	-	-	-			
JAMES BUE	10	10	10	10	10	16	8	8	8	8	8	-	-	8	8	8	8	8			
WALTER SCHUL	10	10	10	10	10	16	8	8	8	8	8	-	-	8	8	8	8	8			
REYNOLDS OLIVER	10	10	10	10	10	16	8	8	8	8	-	-	-	-	-	-	-	-			
ROBERT DAVISON	-	-	-	-	-	-	-	-	-	5	-	-	-	-	-	-	-	-			
WILLIAM PERDUE	-	-	-	-	-	-	-	-	-	8	-	-	-	-	-	-	-	-			
M.T. ARTHUR	-	-	-	-	-	-	-	-	-	8	-	-	-	-	-	-	-	-			
ROBERT BROWN	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	7	8			
TOTALS																					
TO DATE																					
ESTIMATE																					

NATIONAL LABOR RELATIONS BOARD

Case No. 62-23

File No. 62-23

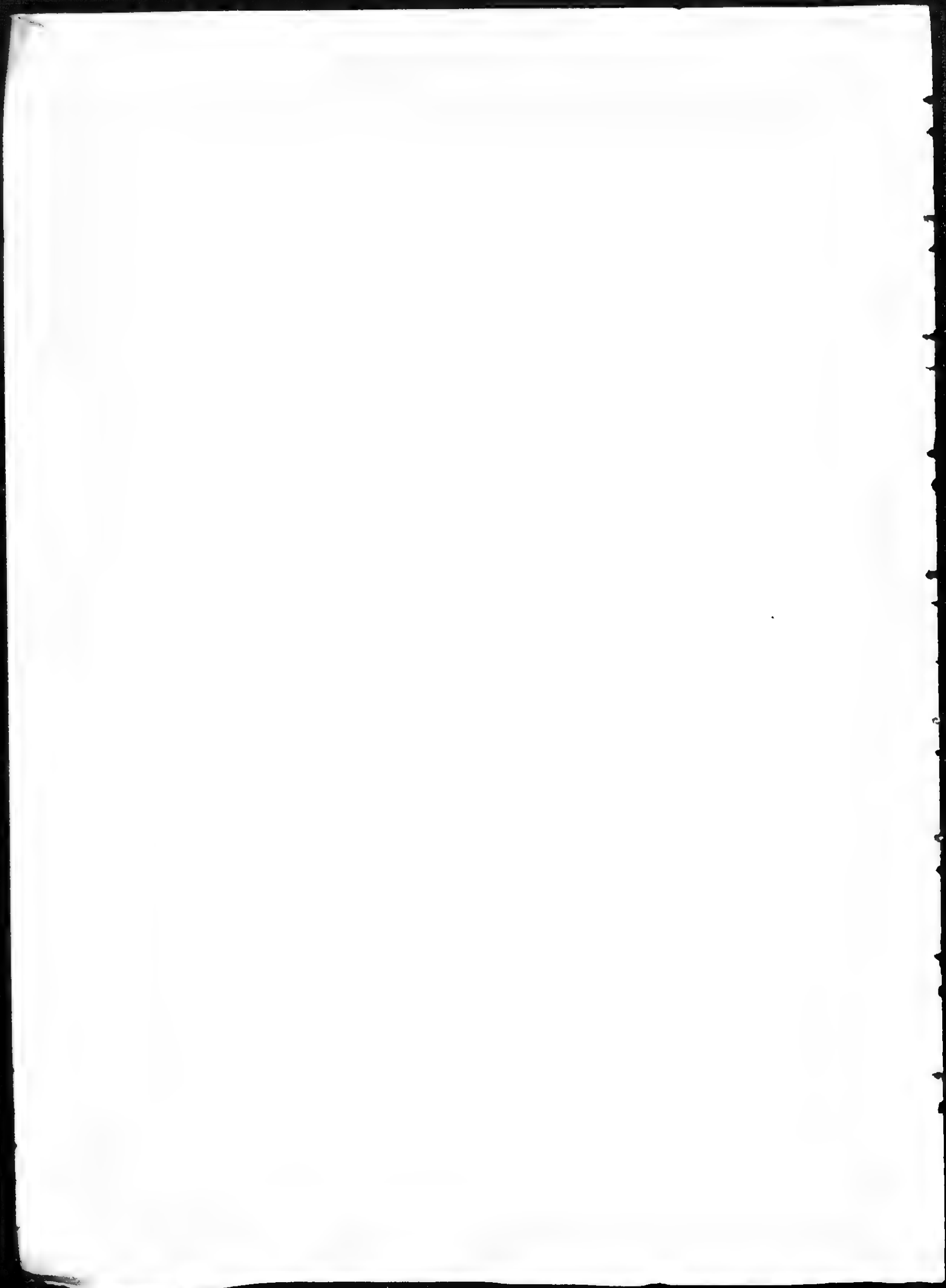
Page No. 1

By Robert Brown

Date 9/28/62

GC E-3

GC E-3



**DECISION AND ORDER****[Case No. 12-CC-223]****Statement of the Case**

On August 9, 1962, Dade Sound and Controls, herein called Dade; Local 349, International Brotherhood of Electrical Workers, AFL-CIO, herein called Respondent; and the General Counsel of the National Labor Relations Board, herein called the Board, entered into a Settlement Stipulation, subject to approval of the Board, providing for the entry of a consent order by the Board, and a consent decree by any appropriate United States Court of Appeals. The parties waived all further and other procedure before the Board to which they may be entitled under the Act, and the Rules and Regulations of the Board, and Respondent waived its right to contest the entry of a consent decree or to receive further notice of the application therefor.

The aforesaid Settlement Stipulation is hereby approved and made a part of the record herein, and the proceeding is hereby transferred to and continued before the Board for the entry of a Decision and Order pursuant to the provisions of the said Settlement Stipulation.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this proceeding to a three-member panel.

Upon the basis of the aforesaid Settlement Stipulation and the entire record in the case, the Board makes the following:

**Findings of Fact****1. The business of the Companies.**

M. R. Harrison Construction Corporation, herein called Harrison, is currently engaged as a general contractor in the construction of a



library building, herein called the project, for the University of Miami. The project is being constructed at Miami, Florida, for said university and the estimated value of the contract is \$2,500,000. During the past 12 months, Harrison has purchased and delivered to the project from local suppliers, engaged in commerce within the meaning of Section 2(6) of the Act, goods and materials which originated outside the State of Florida in an amount exceeding \$50,000, and were shipped directly to said local suppliers from outside the State of Florida.

Harrison subcontracted the electrical work on the project to Miller Electric Co. of Miami, Inc., herein called Miller, who, in turn, subcontracted the installation of sound and communications equipment to J. M. Coker, Inc., herein called Coker, and Coker, in turn, subcontracted the portion of its contract involving labor to Dade.

Dade admits that it is, and we find, that Harrison, Miller, Coker, and Dade, are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## 2. The Labor Organization Involved.

Local 349, International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## ORDER

Upon the basis of the above findings of fact, the Settlement Stipulation and the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

The Respondent, Local 349, International Brotherhood of Electrical Workers, AFL-CIO, its officers, agents, successors and assigns, shall:

a. Cease and desist from:

(1) In any manner or by any means engaging in, or inducing or encouraging any individual employed by M. R. Harrison Construction Corporation, Miller Electric Co. of Miami, J. M. Coker, Inc., or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, or

(2) In any manner or by any means threatening, coercing, or restraining M. R. Harrison Construction Corporation, Miller Electric Co. of Miami, J. M. Coker, Inc., or any other person engaged in commerce or an industry affecting commerce, where in either case an object is to force or require M. R. Harrison Construction Corporation, Miller Electric Co. of Miami, J. M. Coker, Inc., or any other person engaged in commerce or in an industry affecting commerce, to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, Dade Sound and Controls.

b. Take the following affirmative action which the Board finds will effectuate the policies of the National Labor Relations Act, as amended:

(1) Post in conspicuous places at its business offices in Miami, Florida, including all places where notices to members are customarily posted, a copy of the Notice attached hereto, marked Appendix A. Copies of the said Notice to be furnished by the Regional Director for the Twelfth Region shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, in the manner described above, and maintained by it for

92-D

60 consecutive days thereafter. Reasonable steps shall be taken by Respondent to insure that such Notices are not altered, defaced or covered by any other material. No other notices shall be posted or disseminated.

(2) Notify the Regional Director for the Twelfth Region, in writing, within 10 days from the date of this order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C., Sep. 5, 1962

Boyd Leedom, Member  
John H. Fanning, Member  
Gerald A. Brown, Member  
NATIONAL LABOR RELATIONS BOARD

(SEAL)

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**RESPONSE TO RESPONDENT'S  
MOTION FOR A BETTER BILL OF PARTICULARS**

COMES NOW James L. Jeffers, Counsel for the General Counsel, and in response to Respondent's Motion for a Better Bill of Particulars, files the following Bill of Particulars:

1. Respondent, by job foreman, the identity of said job foreman being unknown to the General Counsel at the present time, and by other officers and agents, the identity of said other officers and agents being unknown to the General Counsel at the present time, threatened, restrained and coerced Harrison and Coker.

2. On or about July 27, 1962, and on or about September 13 and 14, 1962, Respondent, by job foreman, Al Logan and union steward, Robert McClain, and by other officers and agents, the identity of said other officers and agents unknown to the General Counsel at the present time, threatened, restrained and coerced Flink and Coker by, inter alia: causing employees at Burns on or about November 1, 1962, to refuse to perform services for Burns at Village.

3. Respondent, by job foreman, Art Laschower, and by other officers and agents, the identity of said other officers and agents being unknown to the General Counsel at the present time, threatened, restrained and coerced Arkin and Kammer.

4. On or about February 4, 1963, Respondent, by job steward, Fred Stamp, and by other officers and agents, the identity of said other officers and agents being unknown to the General Counsel at the present time, threatened and coerced Kovens and Kammer.

5. On or about February 6, 1963, Respondent, by job steward, John Taylor and job foreman, Richard Harrison, and by other officers and agents, the identity of said other officers and agents being unknown to the General Counsel at the present time, induced and encouraged and caused individuals employed by Kammer at Pan American to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport or otherwise handle or work on goods, articles, materials or commodities,



or to perform services for their employer.

DATED AT Tampa, Florida, this 3rd day of April, 1963.

/s/ James L. Jeffers  
Counsel for the General Counsel

[Certificate of Service]

G.C. Exhibit 1(m)

**ORDER ON MOTION FOR BILL OF PARTICULARS  
AND TO STRIKE PARTS OF THE COMPLAINT**

The Respondent by counsel has filed two motions--one for a bill of particulars to require the furnishing of the names of the Respondent's officers and agents not therein named, their relationship to the Respondent Union as relied on in the Complaint to bind the Respondent for their particular alleged unfair labor practices and the approximate dates thereof where not given: -- the second, a motion to strike "Paragraphs D, E, F, G, H, I, J, K, L, M, N, O, and P of the Complaint (evidently meaning Subparagraphs (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) and (p) of Paragraph 1 of the Complaint), the references in the complaint to employers not listed in the original charge, and references in Paragraph 10 of the Complaint to Paragraphs 5, 6, 7 and 8 of the Complaint. The two motions have been referred to me for ruling.

1. The first motion is well taken. It is my opinion that the Respondent is entitled to the information requested.

2. The second motion should be denied. See N.L.R.B. v. Fans Milling Co., 360 U.S. 301, 307-308.

It is hereby Ordered

That the first motion be granted to the extent that the General Counsel shall, by April 11, 1963, furnish counsel for the Respondent the following information in writing:

The names of the Respondent's officers and agents not already named in the Complaint, their relationship to the Respondent as relied

on to bind the Respondent for the particular alleged unfair labor practices, and the approximate dates thereof if not given;

The motion to strike is hereby denied.

/s/ William R. Ringer  
Trial Examiner

Dated: April 3, 1963

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G.C. Exhibit 1(n)

ANSWER

COMES NOW LOCAL 349, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, and files this its Answer to the amendment to Complaint filed by the General Counsel in the above styled case, and says:

Respondent incorporates all of the answer previously filed in this cause as its Answer to the Amendment to the Complaint and in addition thereto says that all of the matters in the Amendment to the Complaint referring to July 27th, 1962 are barred from being the substance of an Unfair Labor Practice charge and a Complaint on the grounds that they occurred more than six (6) months prior to the filing of the original charge in this cause.

WHEREFORE, having made a full and complete answer, Respondent prays that the Complaint be dismissed.

KASTENBAUM, MAMBER, GOPMAN  
& EPSTEIN  
Attorneys for Respondent

By Seymour A. Gopman  
For the Firm.

[Certificate of Service]

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**MOTION FOR A BETTER BILL OF PARTICULARS  
AND MOTION TO STRIKE**

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Respondent moves to strike the Complaint filed in this cause on the same grounds set forth in its Motion to Strike heretofore filed on March 22nd, 1963, and in addition thereto, says as follows:

1. Respondent renews and incorporates all of the previous grounds set forth in its Motion to Strike previously filed herein.

2. Respondent moves to Strike Paragraph 1 of the General Counsel's Response to Respondent's Motion for a Better Bill of Particulars on the grounds that said paragraph fails to state a cause of action against this Respondent in that it fails to allege any agency relationship of the job foreman to the Respondent or any facts upon which such an agency relationship can be inferred. Further, Respondent moves to strike any reference to officers and agents being unknown to the General Counsel in that such references to unknown persons are contrary to the Act and decisions of the Board and do not permit the Respondent to properly prepare its defense in this cause.

3. Respondent moves to strike that portion of Paragraph 2 of the Response of the General Counsel to the Motion for a Better Bill of Particulars in that said paragraph fails to allege or show any agency relationship between the job foreman, Al Logan and this Respondent, nor any facts upon which such agency relationship or upon which liability of Respondent can be predicated. Respondent further moves to strike all other portions of the paragraph dealing with officers and agents of the Respondent who are unidentified, on the same grounds as stated in Paragraph 2 above.

4. Respondent moves to strike all of Paragraph 3 of the General Counsel's Response to the Motion for a Better Bill of Particulars on the grounds that the job foreman, Art Laschower listed in said paragraph is not shown to be an agent of the Respondent, nor are any facts upon which such agency relationship or liability of Respondent can be predicated. Respondent further moves to strike any reference to other officers and agents of the Respondent on the same grounds as set forth in Paragraph 2 above.

5. Respondent moves to strike all references to other officers and agents of the Respondent listed in Paragraph 4 on the same grounds as listed in Paragraph 2 above.

6. Respondent moves to strike that portion of Paragraph 5 relating to Job foreman, Richard Harrison, on the grounds that no agency relationship of Richard Harrison to Respondent is set forth, nor are there any facts upon which to predicate Respondent's liability for the acts of said job foreman, Richard Harrison shown. Respondent further moves to strike all references to other officers and agents on the grounds as set forth in Paragraph 2 above.

7. Respondent suggests that the General Counsel does not know of any other officers and agents as listed in Paragraphs 1, 2, 3, 4 and 5 of the Response to Respondent's Motion for a Better Bill of Particulars since this was the ground and a subject of Respondent's Motion for a Better Bill of Particulars and the failure to so list them now would show that the General Counsel does not know of same, and therefore Respondent should not be required to defend such an allegation.

WHEREFORE, Respondent moves to strike these portions of the Complaint and Response to Respondent's Motion for a Better Bill of Particulars, as set forth above.

KASTENBAUM, MAMBER, GOPMAN  
& EPSTEIN  
Attorneys for Respondent  
By Seymour A. Gopman  
For the Firm.

[Certificate of Service]

G.C. Exhibit 1(w)

**ANSWER TO SECOND AMENDMENT TO COMPLAINT  
AND NOTICE OF HEARING**

COMES NOW the Respondent, by and through its undersigned attorneys and files this its Answer to the Second Amendment to the Complaint and Notice of Hearing.



Respondent incorporates the Answer previously filed in this cause just as though the same was set out in full herein and files that same Answer to the Second Amendment to the Complaint and Notice of Hearing.

WHEREFORE, having made a full and complete Answer to the Second Amendment to Complaint, Respondent prays that the same be dismissed.

KASTENBAUM, MAMBER, GOPMAN  
& EPSTEIN  
Attorneys for Local Union No. 349  
By Seymour A. Gopman  
For the Firm.

[Certificate of Service]

G.C. Exhibit 1(y)

**ORDER ON MOTION TO STRIKE COMPLAINT  
AND FOR BETTER BILL OF PARTICULARS**

Respondent has filed its motion to strike the complaint and a further motion for a bill of particulars, and said motions have been referred to the undersigned Trial Examiner for a ruling.

Upon consideration whereof, it appears that on April 3, 1963, Trial Examiner William R. Ringer entered an order requiring the General Counsel to furnish to Respondent the following information:

The names of the Respondent's officers and agents not already named in the Complaint, their relationship to the Respondent as relied on to bind the Respondent for the particular alleged unfair labor practices, and the approximate dates thereof if not given. (Italics supplied)

And it appearing further that the General Counsel filed a response to said order in which he supplied, among other things, the names of certain job foremen as being among those through whom Respondent engaged in certain conduct, but did not allege what their relationship to Respondent was nor otherwise specify the basis for asserting that

Respondent is bound by their conduct;

And it appearing further that the title "job foreman" is one which is more typically indicative of employer agency, rather than of union agency;

Now, therefore, it is hereby ORDERED that the General Counsel supply to Respondent on or before Friday, April 26, 1963, a further and more particular statement of the facts upon which he relies to support the complaint allegations that the job foremen were officers and or agents of Respondent or the manner by which Respondent otherwise became bound by their conduct as alleged in the complaint.

In all other respects the motion for bill of particulars is denied.

The motion to strike the complaint is also hereby denied.

/s/ George A. Downing  
Trial Examiner

Dated: April 23, 1963

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G.C. Exhibit 1(z)

**RESPONSE TO TRIAL EXAMINER'S ORDER FOR BETTER  
BILL OF PARTICULARS DATED APRIL 23, 1963**

Now comes General Counsel's response to Trial Examiner's Order dated April 23, 1963, and to the previous Orders of the Trial Examiner to furnish Bill of Particulars as follows:

The job foreman was, in each case, a member of Respondent union and was cloaked with such authority by Respondent as to constitute him an agent of the Respondent union. On the Lincoln Life job the foreman was the only representative of Respondent union on the job, there being no steward present. On the Publix, Pan American, Laundry, and Bowling jobs, the Respondent's job steward ratified the action and statements of the job foreman by failing to disavow, repudiate or give any contrary instructions.

With respect to the other Particulars sought by Respondent in its prior Motions, General Counsel presently has no other or further information.

DATED at Tampa, Florida, this 24th day of April, 1963.

/s/ James L. Jeffers  
Counsel for the General Counsel  
National Labor Relations Board  
Twelfth Region  
112 East Cass Street  
Tampa 2, Florida

G.C. Exhibit 9

DECISION AND ORDER  
[Case No. 12-CC-223]

Statement of the Case

On August 9, 1962, Dade Sound and Controls, herein called Dade; Local 349, International Brotherhood of Electrical Workers, AFL-CIO, herein called Respondent; and the General Counsel of the National Labor Relations Board, herein called the Board, entered into a Settlement Stipulation, subject to approval of the Board, providing for the entry of a consent order by the Board, and a consent decree by any appropriate United States Court of Appeals. The parties waived all further and other procedure before the Board to which they may be entitled under the Act, and the Rules and Regulations of the Board, and Respondent waived its right to contest the entry of a consent decree or to receive further notice of the application therefor.

The aforesaid Settlement Stipulation is hereby approved and made a part of the record herein, and the proceeding is hereby transferred to and continued before the Board for the entry of a Decision and Order pursuant to the provisions of the said Settlement Stipulation.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this proceeding to a three-member panel.

Upon the basis of the aforesaid Settlement Stipulation and the entire record in the case, the Board makes the following:

### Findings of Fact

#### 1. The business of the Companies

M.R. Harrison Construction Corporation, herein called Harrison, is currently engaged as a general contractor in the construction of a library building, herein called the project, for the University of Miami. The project is being constructed at Miami, Florida, for said university and the estimated value of the contract is \$2,500,000. During the past 12 months, Harrison has purchased and delivered to the project from local suppliers, engaged in commerce within the meaning of Section 2(6) of the Act, goods and materials which originated outside the State of Florida in an amount exceeding \$50,000, and were shipped directly to said local suppliers from outside the State of Florida.

Harrison subcontracted the electrical work on the project to Miller Electric Co. of Miami, Inc., herein called Miller, who, in turn, subcontracted the installation of sound and communications equipment to J. M. Coker, Inc., herein called Coker, and Coker, in turn, subcontracted the portion of its contract involving labor to Dade.

Dade admits that it is, and we find, that Harrison, Miller, Coker, and Dade, are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

#### 2. The labor organization involved

Local 349, International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

### ORDER

Upon the basis of the above findings of fact, the Settlement Stipulation and the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

The Respondent, Local 349, International Brotherhood of Electrical Workers, AFL-CIO, its officers, agents, successors and assigns, shall:

a. Cease and desist from:



(1) In any manner or by any means engaging in, or inducing or encouraging any individual employed by M. R. Harrison Construction Corporation, Miller Electric Co. of Miami, J. M. Coker, Inc., or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, or

(2) In any manner or by any means threatening, coercing, or restraining M. R. Harrison Construction Corporation, Miller Electric Co. of Miami, J. M. Coker, Inc., or any other person engaged in commerce or in an industry affecting commerce, where in either case an object is to force or require M. R. Harrison Construction Corporation, Miller Electric Co. of Miami, J. M. Coker, Inc., or any other person engaged in commerce or in an industry affecting commerce, to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, Dade Sound and Controls.

b. Take the following affirmative action which the Board finds will effectuate the policies of the National Labor Relations Act, as amended:

(1) Post in conspicuous places at its business offices in Miami, Florida, including all places where notices to members are customarily posted, a copy of the Notice attached hereto, marked Appendix A. Copies of the said Notice to be furnished by the Regional Director for the Twelfth Region shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, in the manner described above, and maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by Respondent to insure that such Notices are not altered, defaced or covered by any other material. No other notices shall be posted or disseminated.

(2) Notify the Regional Director for the Twelfth Region, in writing, within 10 days from the date of this order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C., Sep. 5, 1962

Boyd Leedom, Member  
John H. Fanning, Member  
Gerald A. Brown, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX A

DS-280

NOTICE  
TO ALL MEMBERS  
AND EMPLOYEES  
PURSUANT TO

a Decision and Order of the National Labor Relations Board based upon a Stipulation providing for a Consent Decree of any appropriate United States Court of Appeals, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT in any manner or by any means engage in, or induce or encourage any individual employed by M. R. Harrison Construction Corporation, Miller Electric Co. of Miami, J. M. Coker, Inc., or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, and

WE WILL NOT in any manner or by any means threaten, coerce, or restrain M. R. Harrison Construction Corporation, Miller Electric Co. of Miami, J. M. Coker, Inc., or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require M. R. Harrison Construction Corporation, Miller Electric Co. of Miami, J. M. Coker, Inc., or any other person engaged in commerce or in an industry affecting commerce, to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with Dade Sound and Controls.

LOCAL 349, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL  
WORKERS, AFL-CIO

(Labor Organization)

Dated \_\_\_\_\_ By \_\_\_\_\_ (Representative) \_\_\_\_\_ (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If any of our members or employees have any questions about this notice or its provisions, they may communicate directly with the Twelfth Regional office of the National Labor Relations Board, 112 East Cass Street, Tampa, Florida, phone 223-4623.

[Orig. Filed October 17, 1962]

G.C. Exhibit 10

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,	)	
	)	
Petitioner,	)	
	)	
v.	)	20022
	)	
LOCAL 349, INTERNATIONAL	)	
BROTHERHOOD OF ELECTRICAL	)	
WORKERS, AFL-CIO,	)	
	)	
Respondent.	)	

DECREE

Before TUTTLE, Chief Judge, WISDOM, Circuit Judge, and  
JOHNSON, District Judge.

By the Court:

THIS CAUSE was submitted upon the petition of the National Labor Relations Board for the enforcement of a certain order issued by it against Local 349, International Brotherhood of Electrical Workers, AFL-CIO, its officers, agents, successors and assigns on September 5, 1962, in a proceeding, before the said Board numbered 12-CC-223; upon the transcript of the record in said proceeding, certified and filed in this Court, and upon a stipulation providing for the entry of a consent decree of this Court enforcing the order.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals for the Fifth Circuit, that the said order of the National Labor Relations Board be, and the same is hereby enforced; and that Local 349, International Brotherhood of Electrical Workers, AFL-CIO, its officers, agents, successors and assigns abide by and perform the directions of the Board in said order contained.

[ Stamp ] NATIONAL LABOR RELATIONS BOARD  
Docket No. 12 CC 258  
Official Exhibit. GC 10  
Disposition Received in the matter of Dade  
Sound 29 April - 1 May 63 Reporter Field

ENTERED: October 17, 1962  
[Jurat dated April 5, 1963]  
[ True copy stamp ]

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[Received May 20, 1963]

RESPONDENT'S EXHIBIT 1

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF FLORIDA

HAROLD A. BOIRE, Regional Director )  
of the Twelfth Region of the National )  
Labor Relations Board, for and on be- )  
half of the NATIONAL LABOR RELA- )  
TIONS BOARD, )

Petitioner, )

vs. )

63-115-Civil-DD

LOCAL 349, INTERNATIONAL )  
BROTHERHOOD OF ELECTRICAL )  
WORKERS, AFL-CIO, )

Respondent. )

Miami, Florida,  
March 7, 1963.

The above entitled cause came on for hearing before the Honorable  
Emett C. Choate, United States District Judge, on March 7, 1963.

APPEARANCES:

WALTER A. PICZAK, ESQ. on behalf of the  
Petitioner;

SEYMOUR A. GOPMAN, ESQ., on behalf of the  
Respondent.

- - - - -

2 THEREUPON:

TIMOTHY JOHN SULLIVAN

was called as a witness on behalf of the Petitioner, and having first been  
duly sworn, was examined and testified as follows:

THE COURT: State your name, your address and your occupation.

THE WITNESS: Timothy John Sullivan, 18101 N.W. Sixth Place,  
electrical engineer.

DIRECT EXAMINATION

BY MR. PICZAK:

Q. Mr. Sullivan, you claim you are an electrical engineer. Are



you privately employed? A. Yes, I am a free lance electrical engineer.

Q. Are you the electrical engineer on the Pan American Hospital job? A. Yes, I did that job for Irani and Associates.

Q. In addition to being an electrical engineer, what other things do you do with respect to the Pan American Hospital job? A. I have supervision of the Pan American Hospital.

3 Q. And you do have occasion, then, to appear at the job site?

A. Yes, I do.

Q. I refer you then to the date of February 6th, which is the date that testimony has shown that there was a walk-off on the job. Can you tell me whether or not you had any conversation on that date with anyone? A. Yes, sir. I arrived on the job that morning and I was inspecting some of the electrical installations, walking down the corridor with Mr. Harrison, the foreman on the job, and at that time Mr. Statcavage came down the corridor and we were discussing various and sundry things and the three of us went out into the lobby area and I was discussing with Mr. Harrison the relocation of some fixtures where he had installed them wrong, and at that time Mr. Taylor walked up and told Mr. Harrison, "They are on the job and we are not supposed to work with them."

Q. "They are on the job?" A. Yes. "They are on the job and we are not supposed to work with them."

4 Q. And he was referring to whom? A. The sound men were on the job. I had seen them while I was walking up the corridor and my assumption is that they were talking about the sound people.

Q. How long did you stay on the job site? A. I stayed on the job site--that all started about 11:00 o'clock and I went to lunch from about 12:15 to about 1:15 and I left the job about 2:00 o'clock.

Q. Did you have an occasion to speak to Mr. Statcavage on that date? A. Yes, Mr. Statcavage was talking, I went to lunch with Mr. Statcavage.

Q. Did you have an occasion to speak to him after 2:00 o'clock? A. I believe I called Mr. Statcavage when I got back to my office.

Q. What was your conversation? A. I don't particularly remember what it was.

Q. After 3:00 o'clock did you have any occasion to speak to Mr. Statcavage? A. Only on the telephone conversation. I don't remember what the conversation was.

5 Q. Were you advised that the electricians had left the job? A. Yes, Mr. Statcavage --

MR. GOPMAN: I object, your Honor.

THE COURT: Sustained.

THE WITNESS: That refreshes my memory.

THE COURT: I do not think there is any controversy. They all said they left the job.

BY MR. PICZAK:

Q. Can you tell me whether or not you had any previous conversation at all and with whom, with anybody from the IBEW? A. Yes. Mr. Statcavage came to me some time in December or January and told me he was contemplating using the CWA on the job and asked me what my opinions were. My opinion is that the man who is qualified to install it should be the man who is qualified to maintain it. He asked me what the electricians were going to do on the job. I made a trip on one of my supervisions and I asked Mr. Harrison whether or not he would walk off the job if CWA came on the job, and he said --

MR. GOPMAN: Your Honor, I object to anything that Mr. Harrison may have said. It doesn't bind this Union.

6 THE COURT: He is a working foreman and a member of the Union, so far as the testimony is concerned. Overruled.

What did Mr. Harrison say?

THE WITNESS: Mr. Harrison said he had been told not to work with them. He did not relate to me who told him.

Q. Were you on the job on February 19th? A. Yes.

Q. What happened on that day? A. Well, the Communication Workers of America were working on the job. The electricians were

not there when I was there.

Q. This was about what time? A. This must have been very late in the afternoon because I was making my return swing to the job.

Q. Were you on the job yesterday? A. Yes.

Q. Did you have occasion to speak to anyone? A. Yes, I spoke to the sound men and asked them why they were on the job. I had an agree-

7 ment with Mr. Statcavage that the soundmen would work on the job Saturdays and Sundays and nights and the electricians would work in the day, because I was interested in the job being completed on the completion date as set up by the hospital.

Q. You made an arrangement to have these people work on Saturday and Sunday? A. I had made the arrangements with Mr. Statcavage to keep this job real smooth, quiet and no problems, so that the electricians could catch up, and I asked Mr. Statcavage to have his men working on Saturday and Sunday, and he said, "All right."

Q. When was this? A. A week ago.

Q. This is when you had the conversation? A. Yes. I was at the electrical contractor's office at the time.

Q. And this was after February 6th when they walked off the job and again after February 19th when the electricians were not on the job? A. That's right.

MR. PICZAK: That is all.

8

#### CROSS EXAMINATION

BY MR. GOPMAN:

Q. Haven't you applied for membership in this local Union? A. I worked out of 349 for several years but I have an application in force in the Union. Every time I see Mr. Callahan, I say, "When are you going to give me my card?" and so far, 349 has not chosen to give me one. It is still desired in my respect.

MR. GOPMAN: No further questions.

## REDIRECT EXAMINATION

BY MR. PICZAK:

Q. You have been a member, have you? A. I have worked on a permit for several years out of 349. I was never given an actual card.

MR. PICZAK: That's all.

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EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

BEFORE THE NATIONAL LABOR RELATIONS BOARD  
TWELFTH REGION

In the Matter of:	)	
LOCAL 349, INTERNATIONAL	)	
BROTHERHOOD OF ELECTRICAL	)	
WORKERS, AFL-CIO	)	
and	)	Case No. 12-CC-258
DADE SOUND AND CONTROLS	)	
	)	

Monday, 29 April 1963  
1200 S.W. First Street,  
Miami, Florida

Pursuant to notice, the above-entitled matter came on for hearing at 9:30 o'clock A.M.

BEFORE:

RAMEY DONOVAN, Trial Examiner

APPEARANCES;

JAMES L. JEFFERS, ESQ., Counsel  
for the General Counsel, National  
Labor Relations Board,

1200 S.W. First Street,  
Miami, Florida

KASTENBAUM, MAMBER, GOPMAN  
& EPSTEIN, BY SEYMOUR A. GOP-  
MAN, ESQ., of counsel, and R.T.  
CALLAHAN, Business Agent, Local  
349,

M-101 Biscayne/1 Lincoln  
Road, Miami Beach,  
Florida, and 1657 N.W.  
17th Avenue, Miami,  
Florida, appearing for  
the Respondent Unions.

\* \* \* \* \*



19

## LUCIANO DE ALFARO

a witness called by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. JEFFERS:

Q. State your name and address for the record, please? A. Luciano F. De Alfaro, Corporate Secretary of the Pan American Hospital.

Q. Your occupation is what again, sir? A. Like I said, I am the corporate secretary of the Pan American Hospital.

Q. I see. Now, are you in the process of constructing the hospital building? A. Yes, sir.

20 Q. When did construction on the hospital begin? A. Well, this contract started in around April of last year.

Q. And is it near completion? A. Final inspection I think will be tomorrow.

Q. I see, now, did Pan American Hospital Corporation purchase any goods or materials for use on that hospital? A. Yes, sir.

Q. Sir, do you have any records to show just what type of goods and materials were purchased? A. In this case?

Q. In this case, yes. A. (Examining effects) We got a lease agreement with RCA Television Corporation for the intercom system and the public address closed circuits.

\* \* \* \* \*

25

## RICHARD S. FLINK

a witness called by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. JEFFERS:

Q. State your name and address for the record, please, sir?

A. Richard S. Flink, 1674 Meridian Avenue, Miami Beach, Florida.

Q. What is your business or occupation, sir? A. General contractor.

Q. Does your or did your company construct a bowling alley for

Village Green Crown Lanes? A. Yes.

- 26 Q. Can you tell us who the electrical sub-contractor on that job was? A. Burns and Jaeger.

\* \* \* \* \*

- 33 **CARL COX**

a witness called by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. JEFFERS:**

Q. Please state your name and address for the record? A. Carl Cox, 10970, S.W. 46th Street.

Q. What is your business or occupation, Mr. Cox? A. I am a bookkeeper.

Q. And where are you employed, Mr. Cox? A. M. R. Harrison Construction.

Q. And is M. R. Harrison a General Contractor? A. Right.

Q. Now, did your company ever do any work, any construction work that is for the Miami Laundry and Dry Cleaning Company? A. Yes, we did.

Q. What was the nature of that work? A. Alterations and additions to a building.

\* \* \* \* \*

- 35 Q. Can you tell us the dates when this job began and when it was completed? A. Well, February of 62 was the first pay period and the last one was March 1, 1963.

\* \* \* \* \*

- 40 **WESLEY M. SANDERS**

a witness called by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. JEFFERS:**

Q. State your name and address for the record, please, sir?

- 41 A. Wesley M. Sanders, 1950 S.W. 63 Avenue.

Q. Now, what is your business or occupation, sir? A. I am Vice-President of R.L. O'Donovan, Inc., Electrical Contracting.

Q. Did your company ever do any work on the Miami Dry Cleaning and Laundry Job? A. Yes, sir.

Q. And what type of work was that? A. On that particular job I think that you are speaking about we did some electrical construction, we have done work for them for years.

Q. Who was the general contractor on that job? A. I believe M.R. Harrison was on part of it, but whether he was on all of it or not I couldn't tell you.

Q. Who was your contractor? A. Our contract was with the Miami Laundry.

Q. Your contract was with the Miami Laundry? A. Yes.

\* \* \* \* \*

45

# ENRIQUE MARINA

46

a witness called by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. JEFFERS:

Q. Would you state your name and address for the record, please?

A. Enrique Marina, 2220 S.W. 15th Street.

Q. What is your business or occupation, sir? A. Architect-Inspector at the Pan American Hospital.

Q. And as such Architect-Inspector, what do those duties include?

A. Well, to watch every boy to see he does a proper job and to keep a record of everything.

Q. Do you know who the electrical sub-contractor on that job is?

A. Yes, Kammer-Wood.

Q. Kammer-Wood? A. Yes.

Q. Now, sir, during the course of construction of the hospital, do you know if there were any occasions when the electricians failed to work?

A. Yes.

Q. Did you make any sort of record of that? A. Yes.

Q. What type of record did you make? A. I got down here when they worked and when they didn't.

47 Q. And just what is that book that you have there? A. This is where I have everything in to do with the job.

Q. You make notations in that book during the normal course of your duties out there? A. Right.

Q. Can you tell us, sir, from your record when the first occasion came about when the electricians did not work?

\* \* \* \* \*

Q. Mr. Marina, can you recall of any occasion on the Pan American job when the employees of Kammer-Wood, the electricians, did not work?

A. What means recall?

Q. Do you remember? A. Yes.

48 Q. Did that happen on more than one occasion? A. Two times.

\* \* \* \* \*

MR. DONOVAN: About what time of the morning do you come to the job?

THE WITNESS: Around 8:30.

MR. DONOVAN: And what time do you leave?

THE WITNESS: 4:30.

\* \* \* \* \*

49 BY THE TRIAL EXAMINER:

Q. Do you remember from your own memory any occasions on that job when the electricians were not working although you knew they should be working? A. Yes.

Q. How did you know the electricians were not working on that job? A. Because they were not in the job.

Q. Can you remember - I believe you said this happened on more than one occasion, is that correct, sir? A. Yes.

Q. Can you remember when the first time this happened was, the date? A. Yes, I know the date.



Q. Can you recall the date? A. February 6.

Q. February 6? A. Yes, 1963.

Q. Well, can you recall the time of day, or just what time it was?

A. The afternoon.

Q. Can you recall what time in the afternoon? A. Yes; what time.

Q. Yes, what time was it? A. Between 2 or 3 o'clock.

50 Q. Can you tell us now from your own knowledge what took place on that occasion? A. Pardon?

Q. Can you tell us from your own knowledge what happened, at that time? A. They were not working at that time when I check up, they were not there.

Q. Do you know if they came back to work on that afternoon?

A. No.

Q. You don't know or they didn't come back to work. A. They didn't come.

Q. But until that time, they had been working there in the morning, is that right? A. Yes.

MR. DONOVAN: All right.

BY MR. JEFFERS:

Q. Now, sir, again from your memory, can you remember if they worked the following day? A. I am not sure, I think they did, but I am not sure.

Q. Do you have anything that you could refresh your memory with as to whether or not they worked there the following morning? A. I do.

Q. You pointed then to the book? A. Yes, this book. (indicating)

51 Q. And again would you tell us what that book is? A. Yes, it's where I keep all the records on the job; everything that happens, like trouble we have with sub-contractors and well, everything.

Q. Well, do you make notations in that book, yourself? A. Yes.

Q. All right, sir, now, could you refer to that book and tell us whether the electricians worked the following day or not?

MR. DONOVAN: Go ahead.

THE WITNESS: (Examining book referred) February 6; they didn't work; February 7, they didn't work; February 8, they didn't work; they start working again February 11.

BY MR. JEFFERS:

Q. Do you know if they were supposed to work on February 7?

\* \* \* \* \*

52 Q. Do you know if the electricians, the employees of Kammer-Wood were supposed to work on February 7 and 8? A. Well, that question depends, because I don't know what kind of trouble they have and why they didn't work? But everybody is supposed to be working, but I don't know what the reason was they didn't work.

\* \* \* \* \*

54 Q. All right now, was there any other occasions when the employees of Kammer-Wood did not work? A. Yes, sir, another one.

Q. Can you recall when? A. It's in my book; I don't remember what date.

Q. Did you make any record of that instance? A. Yes, it's in my book.

Q. This book you referred to before? A. Pardon.

Q. In this same book you referred to earlier? A. Yes, sir.

Q. Would it help you to refresh your memory by referring to this book? A. Yes, sir.

Q. Could you refer to that book and tell us when the next occasion was? A. (Examining) March 4, 1963.

Q. Do you know if the electricians were there on the morning of the fourth of March? A. Yes, sir, I have what hour they were not working.

Q. What hour did they leave the job? A. The time I checked the job was 3:30 p.m.

Q. 3:30 p.m.? A. Right.

55 Q. Do you remember if they worked the following day? A. No, I'll have to check.

Q. All right, sir, would that help you refresh your memory? A. Yes. (examining effects) They worked March 5 - no, wait, they came to work March 5, but they didn't work March 6. They didn't work March 7, they didn't work March 8, they start working March 11.

Q. Well, can you remember-you said they came to work on March 5, can you remember if they worked the entire day? A. I'd have to check; I don't know.

Q. Can you tell us by checking? A. (examining effects) No, they didn't work all day.

\* \* \* \* \*

64

# SHIRLEY WOOD

a witness called by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. JEFFERS:

Q. Will you state your name and address for the record, please?

A. Shirley Wood; 700 San Esteban, Coral Gables.

Q. Mrs. Wood, are you connected in any way with the company of Kammer & Wood? A. I am Treasurer of the corporation.

Q. You actively participate in their affairs? A. Yes, I do.

Q. Do you know if your company ever did any work on the Pan American Hospital job? A. Yes.

Q. And did your company ever do any work on the warehouse for Publix Supermarkets? A. Yes.

\* \* \* \* \*

66

Q. Now, are you appearing here under a duly issued subpoena?

A. Yes.

Q. And did that subpoena call for certain payroll records? A. Yes.

Q. Do you have those payroll records with you, please? A. Yes, I do.

\* \* \* \* \*

69

Q. All right, now, referring to your payroll records for employees on the Pan American job, for the week ending February 10, 1963, do you

have that in your possession? A. Yes, here. (indicating).

MR. JEFFERS: I would like to mark as General Counsel's Exhibit No. 5, for identification, what purports to be a payroll record of Kammer and Wood Company for the payroll period February 10, 1963.

(\*General Counsel's 5 for identification)

BY MR. JEFFERS:

Q. Now, calling to your attention General Counsel's Exhibit No. 5, would you point out what section shows which employees were working at the Pan American Hospital job? A. Under the heading of Pan American here. (indicating)

MR. DONOVAN: Let the record show that she pointed to a group of names with the heading ("Pan American.")

\* \* \* \* \*

BY MR. JEFFERS:

Q. Now again Sunday the last column there would be for February 10, is that correct? A. That is correct.

70 Q. And Monday would be February 4, is that right? A. Yes.

Q. Now, I notice on your record for Wednesday February 6 going down the line that it shows each employee with a 6 following his name, just what does that mean? A. That indicates the number of hours that they worked on the job.

Q. I see, so that, on the previous day where it says Tuesday, and shows 8 that means they were on the job 8 hours? A. Yes.

Q. And then on Wednesday, each employee was on the job six hours is that correct? A. That's right.

\* \* \* \* \*

71 MR. JEFFERS: I would like for this document to be marked as General Counsel's Exhibit No. 6 for identification.

(\*General Counsel's 6 for identification)

BY MR. JEFFERS:

Q. Now, showing you General Counsel's Exhibit No. 6 for identification, would you point to the portion of that record which refers to the employees on the Pan American job? A. (Indicating) Here. Listed as Pan American.



(Mr. Jeffers handing copy to Mr. Gopman)

Q. Now, you pointed to the column of names headed up Pan American? A. Right.

Q. Or the second group on that page, is that correct? A. Yes.

Q. And again your payroll period would end on Sunday, is that right? A. Sunday night, that's right.

Q. So that, on this particular one Tuesday would be the 19th of February, is that correct? A. Yes.

72 Q. Again the number in each column following an individual's name refers to the hours worked, is that right? A. The hours worked on that particular job, yes.

Q. Referring then to Monday, it shows that with the exception of the first employee they all worked eight hours? A. Yes.

Q. And on Tuesday, some of the employees worked four; some five, some six and one two? A. Correct.

Q. And then on the following day, most of them worked eight, with one exception four and the first one two? A. Correct.

\* \* \* \* \*

(Thereupon, the document above referred to as General Counsel Exhibit No. 6, for identification, was received in evidence.)

Q. Now, referring again to the Pan American job, this time for the payroll period ending March 10, 1963. I would like to mark for identification as General Counsel's Exhibit No. 7 this document which purports to be a payroll form of Kammer-Wood, Inc. which is dated for the week

73 ending March 10, 1963.

(\*General Counsel's 7 for identification)

Q. Now, directing your attention to General Counsel's Exhibit No. 7 for identification, would you again point out which of the employees were working at the Pan American job? A. (Indicating) At the top of the page here under Pan American.

Q. I see, and again the payroll period ended on Sunday, is that correct? A. Right.

Q. And again the figures after each employees name in each column indicates the number of hours they worked on that day? A. Right.

Q. And on Monday, March 4, each of these employees worked 7 hours? A. Yes.

Q. And on Tuesday, March 5, each worked three hours? A. Right.

Q. Now, I notice there are no entries here for the 6, 7, 8 and 9th?  
A. They did not work.

Q. The employees did not work? A. No.

74 MR. JEFFERS: I would like to introduce into evidence as General Counsel's Exhibit No. 7 for identification, this document as General Counsel's Exhibit No. 7.

MR. DONOVAN: Mr. Gopman?

MR. GOPMAN: Subject to the same objection.

MR. DONOVAN: All right, they will or it will be received into evidence.

(Thereupon, the document above referred to as General Counsel's Exhibit No. 7, for identification, was received in evidence.)

\* \* \* \* \*

MR. JEFFERS: All right, we would like to mark for identification General Counsel's Exhibit No. 8 which purports to be a payroll record for Kammer-Wood, Inc. for the payroll period ending February 10, 1963.

(General Counsel's 8 for identification.)

BY MR. JEFFERS:

Q. Now, directing your attention to General Counsel's Exhibit No. 8, did all of the employees listed on that page work at the Publix job? A. Yes.

75 Q. With the hours indicated after their names? A. Yes.

Q. And again your payroll period ends on Sunday? A. Right.

MR. JEFFERS: All right, I would like to offer into evidence General Counsel's Exhibit No. 8, for identification, as General Counsel's Exhibit No. 8.

\* \* \* \* \*

MR. DONOVAN: All right, it will be received.

(Thereupon, the document above referred to as General Counsel's Exhibit No. 8, for identification, was received in evidence.)

BY MR. JEFFERS:

Q. Now, Mrs. Wood, referring to General Counsel's Exhibit No. 5, which is the payroll record for the Pan American job for the period ending February 10, directing your attention to the Wednesday column for that payroll period where it shows the employees working six hours?  
A. Yes.

\* \* \* \* \*

76 Q. Mrs. Wood, do you know if the employees were supposed to work a full day on that day, that is, ma'am, your employees? A. To the best of my knowledge they were to work a full day on that job.

77 Q. Now, on the following day, or on Thursday, were they supposed to be working at the Pan American job on that day?

\* \* \* \* \*

THE WITNESS: To the best of my knowledge, they were.

BY MR. JEFFERS:

Q. And on Friday of the same week, were they supposed to be working on that job? A. To the best of my knowledge; yes.

\* \* \* \* \*

Q. Do you know, Mrs. Wood, if the foreman on the job works with the tools? A. I do not believe that he does.

Q. Who at your company selects the foreman on the job? A. I believe that Mr. Wood and Mr. Kammer do.

\* \* \* \* \*

Q. All right, now, directing your attention to General Counsel's Exhibit No. 6 which is for the payroll period ending February 24, and directing your attention to the Tuesday column or for the 19th, do you  
78 know if your employees were supposed to work a complete day on that day? A. To the best of my knowledge they were.

Q. Now, directing your attention to General Counsel's Exhibit No. 7, which is for the Pan American job and for the payroll period ending March 10? A. I believe you have two of my payrolls over there.

Q. (Examining effects) Yes, I'm sorry. (handing to witness). Directing your attention to the Monday column or to March 4, do you know if your employees were supposed to work a complete eight-hour day on that day? A. As far as I know they were.

Q. And on Tuesday, March 5? A. The same.

Q. Your employees were supposed to work a full eight-hour day on that day? A. That is correct.

Q. Now, what about, Wednesday, Thursday and Friday, which would be March 6, 7 and 8, were your employees supposed to be working at the job on those days? A. To the best of my knowledge, they should have been.

\* \* \* \* \*

89

# KENNETH CUTCHENS

a witness called by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. JEFFERS:

\* \* \* \* \*

94

Q. Do you know if any of the electricians said anything at this time?

MR. GOPMAN: Objection that is not enough to bind this union, at this time, and it is not a proper predicate or foundation for anything to go into the record that might well prejudice the Respondent.

MR. DONOVAN: Well, of course, it would have to be connected but I think an inquiry can be made along these lines, go ahead.

\* \* \* \* \*

95

BY MR. JEFFERS:

Q. Can you tell us what Mr. Harrison said?

MR. GOPMAN: Objection, there is no showing that anything that Mr. Harrison has said binds this union and there is no foundation laid



for anything involving that discussion or introduction into the record.

MR. DONOVAN: It may or may not bind you, I don't know, but I will permit it.

\* \* \* \* \*

98

HARRY BURNS

a witness called by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JEFFERS:

Q. Will you state your name and address for the record, please?

A. Harry Burns, 2601 S.W. 2d Street, Secretary and Treasurer, Burns and Jaeger.

Q. You are Secretary and Treasurer for Burns and Jaeger? A. Yes, sir.

Q. Tell us what type of company that is? A. Electrical Contractors, sir.

Q. Did your company do any work on the bowling alley job, that was built by the Village Green Crown Lanes? A. Yes, sir.

99 Q. Who was the general contractor on that project? A. Richard S. Flink.

Q. Sir, are you here in response to a subpoena? A. Yes, sir.

Q. Can you tell us, Mr. Burns, if your company had any employees working at this particular construction job on July 27, 1962? A. Yes, sir.

Q. Can you tell us which employees you had working there on that date? A. Do you want me to call them out or give you the list?

Q. Name them off, please? A. Berner; Callahan; Danzig; Evans; Logan; McLain; Papineau; Reeves; Worley, Melikson.

Q. Did you have a foreman on the job? A. Yes, sir.

Q. Which man was foreman? A. Al Logan.

Q. Al Logan? A. Yes, sir.

Q. Sir, do you know how many hours the employees worked at that job on that particular day? A. On July 27?

Q. Yes, sir.

\* \* \* \* \*

100 Q. Can you tell me how many hours were worked on July 27?

101 A. Each employee worked five hours, and the other one worked 5-1/2.

Q. Which one worked 5-1/2? A. L. Reeves.

Q. Now, sir, did you have any employees on the job, this same job, the bowling alley job, on September 13, 1962? A. The only man I have shown on that job is Al Logan.

Q. And that is the man you said was a foreman? A. Yes.

Q. And what about September 14? A. Nothing there at all.

Q. Can you tell us, Mr. Burns, if your employees were supposed to work a full day on that job on July 27? A. They were supposed to work a full day.

Q. What about September 13, were you supposed to have employees on the job on that day? A. Yes, sir, I will say this, that there was work there for them.

\* \* \* \* \*

102 THE WITNESS: Yes, there would have been work there for them.

BY MR. JEFFERS:

Q. What day of the week was that, the 14th, that is, according to your calendar? A. Friday.

\* \* \* \* \*

130 MR. JEFFERS: Call Mr. Herold.

Thereupon:

ROBERT HEROLD

a witness called by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JEFFERS:

Q. State your name and address for the record, please, sir?

A. Robert Herold, 2395 S.W. 21 Street, Miami.

Q. Where are you employed, Mr. Herold? A. J. M. Coker, Inc., Coral Gables.

Q. Did you ever work for Electronic Wholesalers, Inc. A. I did.

\* \* \* \* \*

141 Q. Why did you have to go and ask Mr. Laschower if it was okay with him if you used CWA men to do the job? A. Because it is common knowledge in the construction field that the electricians do not like other people doing work which they feel that they should do and in the course of my work, we sell some installations which are non-union altogether, some of which require union help, and on previous occasions when the services of Mr. McMillen and Mr. Oliveira were not available we have used other electrical contractors, so there would be two of them on the same job to achieve the same result that qualified personnel would do the work where possible we use Mr. McMillen and Mr. Oliveira as being the most qual-  
142 ified, but we can or did clear this with the electrical contractor and we cleared this with the owners of the building.

Q. You clear it with the electrical contractor? A. When I am working for the electrical contractor, that is, when my prime contractor is with the electrical contractor.

Q. Which in this case was? A. With the owner.

Q. You still cleared it with the electrical contractor? A. The electrical foreman.

Q. You thought he was dealing for the contractor, didn't you?  
A. For the union. I thought he was dealing for the union.

Q. What would give you that indication? A. They always have, if the foreman let's you work, and if the foreman doesn't, you don't.

Q. Have you ever been a member of this union? A. No.

Q. How do you know about their operations, or what their policies are? A. Because I have experienced it in different jobs and had it talked about in the industry.

Q. What particular job did you ever experience anything like this again? A. International Flight Caterers.

Q. Where is that? A. Here in Miami.

143 Q. What happened there? A. Nothing happened. The electrical foreman was apprized of the fact that Mr. McMillen and Mr. Oliveira were going to do the installation on certain portions of the communication sales, they did it, worked together harmoniously and that was that.

Q. You went to the electrical foreman again? A. That's right, I had nothing or did not go to the electrical contractor.

Q. And never went to the union to find out about it? A. No.

Q. You never called the union hall? A. No.

Q. Did you ever speak to the union steward about it? A. No.

Q. You only spoke to a representative of the management about it? A. When I spoke to the electrical foreman about the union CWA men that were going to work on my job, I was speaking to him as a union man not as a management man.

Q. You were speaking, how was he speaking? A. He was speaking to me to the best of my knowledge from interpretation.

Q. What you mean is you know not or don't know how he was speaking, isn't that right? A. If he walked, they walked; if he stayed,  
144 they stayed.

Q. The foreman? A. Certainly.

Q. Where did you get that information from? A. I have seen it happen.

Q. Where? A. Pan American Hospital. The foreman left and they all left, that was subsequent.

\* \* \* \* \*

147

# WILLIAM STATCAVAGE

a witness called by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. JEFFERS:

Q. Will you state your name and address for the record, please, sir? A. William Statcavage, 18215 N.W. 53d Avenue, Miami.



Q. Where are you employed, Mr. Statcavage? A. J. M. Coker, Inc.

Q. How long have you worked for that company? A. 7 years in November.

Q. What is the nature of that company, that is, the nature of its operation? A. We are the authorized distributor for Executon in five counties in this area and we do the installation of the Executon Inter-communication Public Address systems and control systems.

148 Q. Did your company ever do any work on the Pan American Hospital job? A. Yes.

Q. And what was the nature of that work? A. Complete nurse call and administrative and public address system.

\* \* \* \* \*

149 Q. Did you do any work on the Miami Laundry and Dry Cleaning job? A. Yes.

Q. Again, was this the same type of work? A. Yes, it was just a public address system.

\* \* \* \* \*

Q. Can you tell us the approximate date the equipment was installed?  
A. I would say it was the latter part of September or the first part of  
150 October. It took a week to put it in, in 1962.

Q. All right, sir, what about the Publix Warehouse, did your company do any work on that job? A. Yes, sir.

Q. Same type work? A. It was a combination of an industrial page system plus an intercom system, for two separate warehouses.

\* \* \* \* \*

Q. Did the company do any work for the Village Green Crown Lanes? A. Yes, we did.

Q. What was the nature of the work you did? A. Again a paging  
system plus an intercommunication system from each tele-score to the  
151 control desk in the kitchen.

\* \* \* \* \*

Q. Can you tell us the approximate date of the installation at the Bowling alley job? A. Again that job was spanned over a period of about three weeks to a month, from July to the latter part of September.

Q. Of 1962? A. Of '62, right.

Q. All right, sir, now, referring to the bowling alley job, did you contact any company with respect to doing the labor portion of your contract? A. Yes, sir, we did.

Q. By the way, who was your contract with on that job?

\* \* \* \* \*

A. The bowling alley itself, with Village Green Bowling Corporation.

Q. Was Flink the General on that job? A. Yes, sir.

152 Q. Do you know who the electrical sub-contractor on the bowling alley job was? A. Yes, it was Burns and Jaeger.

Q. Now, did you ever accompany anyone from Dade Sound to the bowling alley job? A. Yes, sir, I did.

Q. Can you recall when you first went to that job with someone from Dade Sound? A. July the 27th, I think.

Q. Of what year? A. 1962.

Q. Now, on that occasion, did you have any conversation with or were you present during any conversation with any of the electricians on the job? A. Yes, sir, I was.

Q. Where did this conversation take place? A. Within the inside of the building on the concourse.

Q. And who was the conversation with? A. With Al Logan who is the foreman for Burns and Jaeger on that particular job.

Q. Was there anyone else present during the conversation? A. Mr. McMillen of Dade Sound and Controls.

153 Q. Anyone else? A. When the conversation started and we told Al Logan that we were on the job, to have Dade Sound and Controls give me an estimate on the labor or such as Burns and Jaeger did, the only available print for the sound portion of it were on the job and this was added to the prints.

Q. Was that your purpose for going to the job? A. Yes, sir.

Q. All right, go ahead, tell us what was said and what happened on that occasion? A. Don McMillen who was with Dade Sound and Controls and I went out there and due to the fact that the only sound prints that were available were on the job we had to go there; while we were on the job I approached Al Logan and introduced Don McMillen of Dade Sound and Controls and he had asked me if this was the man who was going to do the work. I stated yes that he was and then he asked us whether Don was a 349 man, Don McMillen told him he was not, that he was a CWA man and that he held a card.

He made the statement then, "I don't know if this is going to work out" and then went over to a man who was working in the billiard room which is approximately 20 feet away from us, and then they came back together and as I found out later this man was the steward.

\* \* \* \* \*

154 MR. DONOVAN: This man you learned later was a steward?

THE WITNESS: Yes, sir.

MR. DONOVAN: How did you learn that?

THE WITNESS: Because he was the man that was taking care of the cards and so forth, because Al Logan went to him and brought him back to go over and check over the cards and so forth with him.

\* \* \* \* \*

BY MR. JEFFERS:

Q. Before this other man was called over can you tell us please what Mr. Logan said, tell us what he said to you and what you said to him?

A. When he first approached the job he said we might have some difficulty here and he walked over there and he said, just wait a minute and he went over and got the man working in the billiard room and brought him back.

Q. Did Mr. Logan in any way identify this man? A. At that time, that particular time, I don't think that he did, not that I recall.

155 MR. DONOVAN: When they came back, what did they do then?

THE WITNESS: Well, that this was Don McMillen and we told him that this is the man that we had on the job and that he was the one that I

would like see do the work and he said that, well, he just can't work out.

MR. DONOVAN: Who said that?

THE WITNESS: The steward.

MR. GOPMAN: Objection.

MR. DONOVAN: The man with Logan?

THE WITNESS: Correct.

MR. DONOVAN: All right.

THE WITNESS: I asked him if he would work with the telephone company if they had come on the job and he said, I have nothing further to say, and he proceeded with that to walk away from us. Now, at this time, a cease and desist order was brought up to Al Logan and we said we had these affidavits filed and with that Al Logan went in and got the man who was talking with us before and told him that these papers were in the file and that these proceedings were in the mill.

I then asked Al if there was anything that we could do to check into this thing further, and the man proceeded to go to the telephone. Don McMillen and I immediately proceeded along our checkoff to see exactly what was going to be involved in this and I saw the man that was with us

156 before hang up the telephone and start walking away.

I tried to attract his attention and I asked him who or what the scoop was and he returned to me and replied that well, you'll find out or you will see and with that he went away from us.

We proceeded about our business again, no tools were brought in, no rulers or anything and about 15 minutes later Al Logan came up to me and said - at that time, the job superintendent was Tommy Adams was with us, and Al Logan came up to us and said that the electricians are walking off the job. I don't know what for and he raised his hand up and said we have to leave and with that he turned around and he left.

BY MR. JEFFERS:

Q. Now, would you know Mr. Logan, if you saw him? A. Yes, I worked with him previously.

Q. Would you know this other man if you saw him? A. I believe I would.



Q. Were you ever able to ascertain what this man's name was?

A. Robert McLain.

\* \* \* \*

THE WITNESS: May I interject something here?

157 MR. DONOVAN: Yes.

THE WITNESS: I had to later award the contract to Burns and Jaeger to do the labor of this job due to this difficulty. We went along with it and as this job proceeded I was to furnish the supervision for the job and I stayed on the job for two weeks and I also had struck up a conversation with McLain and this is how I found out that he was the steward and his name was Mr. McLain.

We struck up a conversation after about a week of work and this information was sought. I didn't know his name in the beginning and I stayed on the job for the remainder of the two weeks and I found out through conversations with him that he was the steward and what he felt on this job or why he would not work with these people.

BY MR. JEFFERS:

Q. Now, just a moment, you say that you had a subsequent conversation with Mr. McLain? A. Yes.

Q. And this was the individual who participated in your first discussion? A. That is true.

Q. Can you tell us about how long after your conversation with Mr. Logan that you had a subsequent conversation with Mr. McLain? A. About a week after, because then I had to award the job to Burns and Jaeger and provide supervision.

158 Q. Where did this subsequent conversation take place? A. Within the bowling alley on the concourse.

Q. Was there anyone else present during this conversation? A. No, just between McLain and myself.

Q. Relate what was said between McLain and you, at that time?

A. I had asked him why he felt that he could not work along with these people and he said, well, it is a personal thing, whatever I do, if I feel like walking off the job I'll walk off the job and the other men will just follow suit.

Q. Is this what he said? A. Yes. I don't recollect why this conversation came up, but he and I were just standing together by the desk and how it started I don't recall to this point, but I know in that conversation I asked him why he felt that this company could not, why they couldn't avoid Dade Sound and Controls.

Q. Was Mr. Logan still on the job, at that time, do you recall?

A. Yes.

Q. Now, you stated that you did award the sub-contract for the installation work to Burns and Jaeger? A. Yes, sir.

Q. Did Burns and Jaeger complete the installation? A. No, sir, they did not.

Q. Can you tell us why not? Did you award it to someone else?

A. Well, even with the supervision I was providing on the job, I had a  
159 certain labor figure that I could actually work with. The job was not progressing, number one, as it should have in time because of it they had to start the alley in motion as far as money was concerned, I knew exactly how much work I could get out of \$800 because of previous alleys that we have done, and this labor figure had expired.

I had no choice but to take and tell Burns and Jaeger that we would have to terminate our agreement and that I would go ahead and finish the job with my own people.

Q. And then who if anyone did you subsequently contract to finish the job? A. I gave it again to Dade Sound and Controls providing supervision.

Q. And did Dade Sound subsequently return to the job? A. Yes, sir, they did.

Q. Do you know when they returned to that job? A. September 13.

Q. Were you at the job on that day? A. Yes, I was.

Q. On that particular day, did you have any conversation with any of the electricians on the job, employees of Burns and Jaeger? A. Yes. There were two occasions. One occasion was when we came on the job, that is Dade Sound and Controls and myself.

160 Q. About what time of day was this? A. I would say it was just before the noon hour around 11 or 11:30. In fact, it was closer to 11:30 than to 11.

Q. Who was with you, at that time? A. Dade Sound and Controls.

Q. Who do you mean by Dade Sound and Controls? A. Don McMillen and Al Oliveira.

Q. Go ahead. A. And when we came on the job, Al Logan approached me and asked me if they were coming on the job and I said, yes, and he said, well, I will have to leave because I have two strikes against me now and I can't afford anything like this and with that we sat down, Dade Sound and Controls and myself, we sat down and had our lunch. It was lunch time then and the fellow who was working with Al Logan and I don't know his name sat down a table ahead of us there and he struck up the conversation of well, what seems to be the gripe here and I says, well, you tell me, I don't know.

And with that, that was all the conversation. They left the job shortly after the lunch hour.

Q. Who do you mean by they left the job? A. The electricians.

Q. Did you see Mr. Logan leave the job? A. I didn't see him leave the job, but I know they weren't there the rest of the day.

161 Q. How long did Dade Sound work on the job after that? A. I'd say about a week, it took us another week to complete it, and that is working evenings also.

Q. Now, referring to the Miami Laundry and Dry Cleaning job, do you know who the electrical sub-contractor was on that job? A. R. L. O'Donovan.

Q. And who was your contractor? A. Miami Laundry.

Q. That is, who was your contract with? A. Miami Laundry.

Q. Did you sub-contract any portion of your work on that contract?  
A. Yes, the labor portion of it to Dade Sound and Controls.

Q. Now, did you yourself ever go to the job site? A. Yes, on construction jobs such as for the bowling alley, we have to check these jobs periodically to make sure the conduit in our locations for our

equipment will be in the proper place upon its completion.

\* \* \* \* \*

162 Q. Did you ever have any conversation with any electricians on that job with respect to Dade Sound? A. Yes.

Q. Can you remember when that conversation took place? A. I'd say about in the latter part of September.

Q. Of what year? A. Of 1962.

Q. And who was the conversation with? A. The foreman on the job and the steward on the job.

Q. Where did this conversation take place? A. Within the premises of the building, on the inside.

163 Q. Was there anybody else present during the conversation?  
A. Don McMillen of Dade Sound and Controls.

\* \* \* \* \*

Q. Tell us how you knew this conversation was with the foreman and the steward? A. With these past operations in the last seven years, any new construction that we have done and which pertained to the electrical portion of it we always worked a pattern of seeing or seeking out the job foreman on the job.

Q. And on this job did you seek out the job foreman? A. Yes, I did.

Q. How did you seek him? A. I would ask the people that would be on the job who were handling tools with a pouch and I would ask them if they would relate to me the location of where the foreman was working on the job and how to identify him and with that I made my approach and asked him if he was the job foreman and he would then identify himself and I would then continue on with locations or whatever we had to develop.

Q. Now, with specific reference to the laundry job, did you ask any individual if he was the foreman on the job? A. Yes.

164 Q. What was his reply? A. When I finally contacted him, yes.

Q. Did anyone tell you who the foreman was? A. Yes, the individual who I talked to.

MR. DONOVAN: Did he tell you his name?



THE WITNESS: No, he didn't.

BY MR. JEFFERS:

Q. Did you ask him his name? A. No, I didn't.

Q. Were you able subsequently to ascertain what the individual's name was? A. Yes.

Q. How did you ascertain what his name was? A. I contacted R. L. O'Donovan's office and asked for the name of the job foreman and the job steward on the job.

\* \* \* \* \*

165 MR. DONOVAN: You called O'Donovan's office, do you know to whom you spoke?

THE WITNESS: Their superintendent on the job is Jess, not the steward or foreman, but the office superintendent.

MR. DONOVAN: And he told you who the foreman was?

THE WITNESS: Yes.

MR. DONOVAN: Who did he tell you it was?

THE WITNESS: Emelio Diaz, was the job foreman and that Henry Disney was the job superintendent.

MR. DONOVAN: The job superintendent?

THE WITNESS: Job steward, I'm sorry, excuse me.

BY MR. JEFFERS:

Q. Disney was the job steward, he said? A. Yes.

\* \* \* \* \*

Q. I'm sorry, going back to the laundry job, while you were at the job site, did anyone identify himself as job steward or did anyone else point out the job steward? A. The job foreman.

Q. And would you relate for us please your conversation with the job foreman?

\* \* \* \* \*

166 Q. Thank you. Would you relate that conversation for us, please, sir? A. I told him that I would like to get this Dade Sound and Controls to handle my labor on this particular job and he then said that they would discuss it between themselves and that they would let us know in a few

days whether this arrangement could be made or whether Dade Sound and Controls could make the installation.

Q. Was he referring to anybody in particular when he said, they?

A. His own people that he worked with.

Q. Can you recall anything else that was said, at that time? A. Not to my recollection, nothing; no.

167 Q. Now, did you have any subsequent conversations with any of the electricians on the job concerning the same subject matter? A. Yes, we did.

Q. In relationship to the conversation that you just told us about when did the second conversation take place? A. Approximately a week later.

Q. Who was present during this second conversation? A. Don McMillen and myself, the job foreman and the steward, all four of us were there.

Q. Where did it take place? A. In the east section of the locker room.

Q. Can you recall approximately the time of day? A. About 2 o'clock in the afternoon.

Q. All right, would you relate that conversation for us? A. When we got there I had sought Emelio and asked him what decision that they had made between themselves. The job steward then seemed to take over the conversation and said that they would not be able to work with Dade Sound and Controls, and that Dade Sound and Controls or Don McMillen then asked him what his reasons were and he stated that they had no answer actually and Dade Sound and Controls told him that he had a CWA card and that he was union and that the telephone people who were working over worked with them, so why wouldn't he work with him.

168 Q. By Dade Sound and Controls, you mean Mr. McMillen? A. Don McMillen, that's right, and he proceeded to give no answer and I asked him if they came on the job would there be a work stoppage and he said that there would be. I then proceeded to have R. L. O'Donovan do the work.

Q. Did Dade Sound do the installation work? A. No, they did not.

Q. Can you recall when you awarded the contract to R. L. O'Donovan?

A. That same day.

\* \* \* \* \*

Tuesday, 30 April 1963  
1200 S.W. First Street  
Miami, Florida

169 Pursuant to adjournment, the above-entitled matter came on for further hearing at 9:30 o'clock A.M.

\* \* \* \* \*

171

WILLIAM STATCAVAGE

a witness called by and on behalf of the General Counsel, after having been duly sworn, was re-examined and testified further as follows:

CONTINUED DIRECT EXAMINATION

BY MR. JEFFERS:

Q. Now, directing your attention to the Publix Warehouse job, did you on any occasion ever go to the job site on that job? A. Yes, sir, we did.

Q. Now, do you know who the electrical sub-contractor on that job was? A. Kammer-Wood.

Q. Now, when you were at the job site, did you on any occasion ever have any conversations with any of the electricians on the job, that is, for Kammer and Wood with respect to Dade Sound?

\* \* \* \* \*

172 Q. Can you remember the date that conversation took place?

A. Yes, it was on February 4.

Q. Can you recall what time of day it was? A. I'd say about 2 o'clock.

Q. Where on the job site did this conversation take place? A. In the produce department.

Q. Now, who was present during this conversation? A. Dade Sound and Controls, myself, Dale Goldsmith and the steward on the job.

Q. Now, who is Dale Goldsmith? A. He is the representative or superintendent.

Q. And was he the superintendent on that job? A. Yes, sir.

Q. And who do you mean by Dade Sound? A. Don McMillen and Al Oliveira.

Q. Do you know the job steward's name? A. Fred Stamp.

\* \* \* \* \*

173 Q. All right, would you relate the conversation, please? A. When Dade Sound and Controls came on the job to show them, for me to show them the locations of the equipment and so forth, the steward approached Dade Sound and Controls and myself and asked them for their cards. They showed him their cards and the steward then showed them his and with that he started walking away and Dade put their cards away and J. M. Coker I told him was not doing this job, that Dade Sound and Controls had been sub-contracted to do the job and that they were attached with CWA and that I had cleared with Browning the job foreman about a week ago and that he assured me that there would be no difficulty, that as long as these people worked with other union shops that it was all right.

And at this particular time he said he saw no reason why he would have any problems and so that is why I proceeded this day to go over the job with Don McMillen in order to start the job, and after he showed them his card, he started walking away.

Q. All right, then what happened, if anything? A. We proceeded to go over the locations of the equipment and I felt that Don McMillen and Al Oliveira should know Pete Newsom and Dale Goldsmith in case there were any problems on the job.

174 Q. Who is Pete Newsom? A. The man I signed the contract with was from Publix, the Publix representative.

Q. I'm sorry; continue. A. And in the process of seeking Mr. Goldsmith we went to the construction shack and in coming from the construction shack we saw Mr. Goldsmith. Browning and the steward motioned for us to come up on the ramp and at that time we proceeded to do so and Mr. Goldsmith then said, "Well, I'd like to hear what these fellows have to say." With that the steward said, that is, he asked Dade Sound and Controls if they were CWA and they said that they were and then he turned away and he said that he felt that he could not work with them.

Q. Who said that? A. This is all the steward's conversation and



that he would not, if Dade Sound and Controls came on the job, that he would have to leave.

I then turned to Browning and I asked him if he would, and he says yes, that he would. And then I asked the steward if the Telephone Company would come on the job whether then he would walk off and he replied that he wouldn't, that he would work with the CWA people from the Telephone Company.

With this Dale Goldsmith interjected and said that, well, the last time I talked to Pete Newsom he didn't care how the job could be done, or in other words, that we could wait until the electricians were off the job and then come in.

175 And so, with that, I felt that it was up to Pete Newsom to make the decision on what should be done.

Q. Just tell us what was said between the parties. Was there anything else said? A. Not that I can remember. Should I go ahead?

Q. Well, can you recall anything else that was said at that time?

A. Not at this particular time, no.

Q. All right. Were there any further conversations? A. You mean with the steward?

Q. Yes. A. Yes.

Q. All right, go ahead. A. Fred Stamp and I went to look for Pete Newsom and in the process I had asked him if he was the steward on the job and he replied that he was and finally we found that Pete Newsom was back in the shanty and so we proceeded to go in there and talk to him. I took Dade Sound and Controls with me and Mr. Goldsmith.

Q. Who do you mean by Dade Sound and Controls? A. Don McMillen.

Q. And Mr. Goldsmith was also there? A. Yes. Mr. Goldsmith and the steward were also there and they went in the shanty.

Q. Can you recall any of the conversation that went on there?

176 A. I proceeded to tell Mr. Newsom that when I took the job on that I was non-union and that I hired these people to do my work and that now we are on the job that we are not allowed to continue. And with that he asked

the steward, Newsom asking the steward, what his reasons were for not being able to work and he replied to that that this was a personal thing in that he couldn't work with anybody that wasn't cleared out of the Hall and it's just a personal thing and with this Dale Goldsmith had called Kammer-Wood in the meantime and I had to leave the parties there to go into the other part of the shanty to talk to Mr. Kammer on the telephone and he had asked me, he said, "I thought you were with J. M. Coker." And I told him we were not but that we had sub-contracted the labor portion to these people and if there were any questions that the man here, the steward, would be able to answer them.

And he got on the telephone and proceeded to talk to Mr. Kammer. And I could just about hear the conversation. I stepped away and then he was talking to Bill.

Q. Who was he? A. The steward. And I heard something about personnel and an injunction and I could just about make out the other words. I couldn't verify the other words. I then left and went back with the other people and I returned shortly and it was left to Pete Newsom to make a decision for that. Everything had been left in abeyance. And

177 I received a call later on at 4:30 and Pete Newsom had reached a decision. He told me, "I don't care how you get the job done but I don't want any work stoppage; I just want it done."

Q. Did you have any further conversations with Mr. Stamp? A. No.

Q. All right. Now, directing your attention to the Pan American job, did you on any occasion ever go to that job site? A. Yes, I did.

Q. Do you know who the electrical sub-contractor on that particular job was? A. Yes, it was Kammer-Wood.

Q. And on any occasion while you were at the job site did you ever have any conversation with any of the electricians on that job concerning Dade Sound or were you there present during such conversation? A. Yes.

Q. Can you recall the date when this took place? A. February 6th.

Q. What year is that? A. 1963.

178

Q. Where did this conversation take place? A. At that job site, within the building.

Q. Can you recall the time of day? A. I would say it was between 10:30 and 11 o'clock in the morning.

Q. Now, who was present during this conversation? A. Dick Harrison, Tim Sullivan, who was the electrical engineer, and myself.

Q. And who is Dick Harrison, do you know? A. Dick Harrison was the foreman on the job.

Q. The foreman for who? A. Kammer-Wood.

Q. All right. Would you relate that conversation?

MR. GOPMAN: Objection on the same ground stated yesterday, that it is hearsay and that the Union is not bound by it.

MR. DONOVAN: Overruled. Go ahead.

THE WITNESS: I met Tim Sullivan on the job to go over the nurse call system and whatever problems we had and Harrison had asked me, "When are you going to get the wire pulled into this job?" And I repeated, "The men are on the job right now", and with that, this other electrician came around the corner and said that they are on the job and that we don't recognize them, that we'd better check it. And I asked Dick Harrison,  
179 "Well, if we are going to have any problems, let's go ahead and check them now."

He proceeded to leave us, and with that, I didn't see where he went, but then five or ten minutes later he returned and I asked him had he contacted anybody and he said, no, he couldn't reach anybody.

BY MR. JEFFERS:

Q. Now, you mentioned another electrician, do you know his name?

A. Don Taylor.

Q. Was he identified to you in any manner? A. No, he wasn't.

\* \* \* \* \*

#### CROSS EXAMINATION

BY MR. GOPMAN:

Q. How long have you been in business here, Mr. Statcavage?

A. I have been employed by this company for seven years.

Q. Do you have any supervisors here? A. I am a partial supervisor.

180 Q. Is there anybody over you? A. Yes, sir, my employer.

Q. Who is that? A. Mr. Earl Thery.

\* \* \* \* \*

183 Q. As I was stating, you have developed a pattern on these things, where apparently you go to the job and speak first to the job steward, is that right? A. I am going to back off on that. I don't believe that I have developed any pattern.

Q. Don't you always go to the job and speak to the foreman or the steward? A. Yes, even in the progress of the job, to check locations and so forth.

Q. What would you have to speak to the steward about? A. I didn't say I spoke to the steward.

Q. You speak to the foreman alone? A. Yes.

Q. And you discuss with the foreman whether or not these people can work on this job you are talking about, Dade Sound, now? A. On occasions, yes.

184 Q. But most of the time you go to the job and you speak to the foreman, is that correct? A. Yes.

Q. And what do you talk to him about? A. Well, to see how the progress of the job is and so forth and then he asks me if I am union and I will tell him no, that I am not, but I have the people that do my work for me and they are Dade Sound and Controls who are CWA people.

Q. You go to the foreman to discuss how you are going to work with them on the job, is that correct? A. How I work with who?

Q. With the foreman and his crew. A. Yes.

Q. You discuss plans with him and go over blueprints? A. Yes, if we have to.

Q. You discuss scheduling the work when it's going to start with him? A. Sometimes they will ask me. I don't schedule it, but they tell me that the job is ready to go, then I will try to dispatch the people to that particular job at the time required.

Q. In every case you instruct the foreman that you are going to use CWA people? A. If the question arose, yes.



185

Q. Do you always mention Dade Sound and Controls when you go to the foreman and when he asks you if you are union? A. On occasions I do.

Q. When they try to pinpoint it? A. Yes.

Q. On which jobs do you do that that you testified about where you in advance told the foreman that you were union? A. Well, I would say the Publix job, the Pan American job and I'd say the bowling alley.

Q. You didn't do it on the laundry job? A. Yes, I did it on the laundry job.

Q. So that you did it on all the jobs then? A. Yes.

Q. So on every single job then you did tell them that you were union? A. Because I was asked.

191

Q. Now, when you spoke to Don McMillen you spoke to him on the bowling alley, that was the Village Crown job, correct? A. Yes.

Q. Didn't McLain say on one of the occasions when you spoke to him that it was a personal thing with him and that he wouldn't work? A. That's right.

Q. Did he give you any reason why he wouldn't work? A. No. He just felt that he couldn't work with Don McMillen and that if he walked off the other people would follow the same way.

192

Q. Now, at the Publix job, when you came to the job, you came there, I believe you testified, with McMillen and Oliveira, is that correct? A. Yes.

Q. What did you do first? A. We began to look over the set of prints that had the layout of the paging system and the inter-communication system in the produce department.

193

Q. All right, and then what did you do? A. This is when we went to see Dale Goldsmith. I had to leave, I had appointments, and I wanted Don McMillen and Al Oliveira to know Dale Goldsmith in case there were any problems as far as prints and equipment were concerned because the prints that we had were vague on the layout.

Q. So you went to see Dale Goldsmith? A. Yes.

Q. And you went looking for him? A. Yes.

Q. All right. Then what happened? A. With that we were admitted to the shanty and I tried to make a telephone call and the line was busy and we started going back into the warehouse and this is when Dale Goldsmith, Browning and the steward approached us.

Q. They were all together? A. The three of them were, yes, sir.

Q. You hadn't spoken to the steward yet that day? A. I had, yes.

Q. You had spoken to the steward first? A. Previously when he approached.

Q. I asked you exactly what happened. Let's start all over again. I am a little confused about the events. You came to the job looking for Goldsmith? A. Yes.

194 Q. Who did you speak to first? A. The steward.

Q. You spoke to the steward? You were looking for Goldsmith and spoke to the steward? A. When we first came to the job we started making the layout. We were in the produce department and the steward approached Don McMillen and as I said before, asking for their cards, and then he went away and that was the last conversation that I had with the steward. Then we went seeking Goldsmith.

Q. All right. Did you find Goldsmith? A. He found us.

Q. He found you where? A. When we were coming back into the building.

Q. All right. Who was with him? A. Browning, the steward and himself.

Q. They were all together? A. The three of them were, yes, sir.

Q. Wasn't Browning alone with Goldsmith first? A. Not as near as I can remember.

Q. At that time when you spoke to the steward weren't he and Browning present together? A. The first time or the second time?

Q. The second time. A. Yes, they were, and so was Dale Goldsmith.

195 Q. The first time the steward said nothing to you about what was

going to happen? A. No, not to me. He approached Dade Sound and Controls and asked them for their cards.

Q. Then when you spoke to the steward again he was present with you and Goldsmith? A. And Browning.

Q. And Browning? A. Yes.

Q. And was Dade Sound and Controls present at that time? A. Yes.

Q. At the same exact place? A. They were just a few steps away.

Q. I see. They were part of the conversation? A. No. I think that I did most of the talking.

Q. And the steward told you what exactly on that occasion? A. That he felt that he could not work with these people.

Q. Did he say why? A. Only that he had brother members at the hall that he would like to see do the work. I did ask him if he would work with the telephone people if they came on the job and he said that they would.

Q. You asked him that too? A. Yes, I did.

\* \* \* \* \*

202 Q. Now, going back to the Publix job for a moment, you say that you overheard a conversation on the telephone between the steward and he was speaking to somebody named Bill, is that right? A. Yes.

203 Q. And he is employed by Kammer-Wood? A. Who is?

Q. The steward, Fred Stamp? A. Yes, all right.

Q. Well, is that correct? A. I believe he was working for Kammer-Wood.

Q. And they were the electrical contractor on that job, weren't they? A. Yes.

Q. Do you know anybody in Kammer-Wood named Bill? A. The only one that I know of is Bill Brush.

Q. He is the supervisor? A. He is the supervisor.

Q. He would be at the office and he would normally handle phone calls that came in from the job like this? A. Well, the phone call was directed to Mr. Kammer when I was talking to him and evidently the phones were switched.

Q. And again you heard the steward say that it was a personal, or that the reason was personal, and that he wouldn't work? A. That it was personal and I heard the word injunction, that I heard quite clearly, but I can't actually recall the exact words that were preceding it and not to the detail, that it was personal and injunction.

\* \* \* \* \*

205 Q. Yes, I think so. Now, let's go over this incident at the laundry job. When did you get there? What was the date that you came to the laundry job? A. Which time, sir?

Q. The first time. A. As near as I can remember it was about the middle of September, sir, but the exact date, that I don't have.

Q. And what went on there on that particular occasion? A. I had taken Dade Sound and Controls on the job to give me an estimate for the labor on that particular job.

Q. Let me ask you this. Which officer of Dade Sound or which individual? A. Don McMillen.

Q. He is the technician? A. I believe he is.

Q. You took Mr. McMillen on the job then? A. Yes, and he is also their estimator, I believe.

206 Q. All right, go ahead. A. Well, there were two pieces of conduit that were to be furnished by the electrical contractor from the new construction to the old one and I sought the foreman on that job, again to make sure that there was not a discrepancy on one of the box locations near the switchboard. We were also asked at that particular case about the Union, whether we were union or not by the foreman. And I told him that Dade Sound and Controls was the CWA representative, that I wanted on the job, and that he was here to estimate the job.

Q. You don't recall the date that this occurred, do you? A. No, sir, I don't.

Q. Will you just hold it for one minute, please? (Examining effects) All right. You say that it was in the middle of the month. The General Counsel, in his complaint, said that something happened on the job on



September 11th. Is that the date that you went there? A. I can't recall.

Q. All right, go ahead. You say the foreman asked whether or not they were union. A. Whether Don McMillen and Dade Sound were union and we told them that they were and that I would like to have them do the job for me.

Q. He asked whether Don McMillen and Dade Sound were union, is that right? A. He just said, were you union.

207 Q. He just said, were you union? He didn't ask what their names were? A. Well, that I can't recall now.

Q. Well, to the best of your knowledge you don't recall him asking whether the company was union and naming the company specifically?

A. No.

Q. Your answer is no? A. As best as I can recall, no.

Q. And you answered him and told him what? A. That they were CWA and that they worked with these other electrical contractors on jobs and that I would like to have them do this job.

Q. Okay. What occurred then? A. He said he made no decision right there, but he said that he would talk it over with his men and give us a decision then.

Q. He said that he would talk it over with his men and give you a decision later? A. Yes.

Q. That was the foreman who said that? A. Yes, sir.

Q. You didn't ask him his name at that time? A. No, sir, I did not.

208 Q. Then what occurred on the laundry job? A. Approximately a week later, I believe, we came back, or had the equipment with us, and we sought the foreman and he in turn got a hold of the steward and I asked him whether they had made a decision and the steward then wanted us to go over the conversation and he felt that he could not work with Dade Sound and Controls and that they had their own people and that if Dade Sound and Controls came on the job that there would be a work stoppage.

Q. You say this was a week later? General Counsel in his complaint has stated that this occurred about, or that something occurred on September 18th. Would that be approximately the correct date? A. I can't remember the date.

Q. Well, is there any way that you can pinpoint that date with reference to anything else that you did that day? A. No.

Q. Did you on that day make a statement to the National Labor Relations Board? A. September the 18th? Yes, I think I did.

Q. Did this occur prior to the time that you made the statement or after the time you made the statement? A. I believe I made the statement after that.

Q. You believe you made the statement afterwards? A. Yes.

Q. And you referred to the Miami Laundry job in the statement?

209 A. Well, if it says it in there then I probably did.

Q. Let's see if you can find in the statement any reference to these conversations that you had with the steward and the job foreman. A. I wasn't here to make the statement.

Q. This was the statement you made on the 18th. A. (Examining) I don't see anything in there.

Q. And you referred, of course, to the job and to the troubles that you were having on that job in the statement? A. Yes.

Q. And you did not mention anywhere in the statement that you gave to the Board any discussions with any steward or with any job foreman on the job? A. Not that I can remember right now.

Q. And you knew who the steward was on that occasion? A. Yes, I did.

Q. And you knew who the job foreman was on that occasion? A. Yes, sir.

\* \* \* \* \*

212

# REDIRECT EXAMINATION

BY MR. JEFFERS:

\* \* \* \* \*

213 Q. In relationship to your second conversation on the laundry job when did you award that to R. L. O'Donovan? A. The same day.

Q. The same day? A. Yes.

214 Q. Now can you recall, sir, when you awarded the contract to R. L. O'Donovan? A. I called him right after we had the discussion with the steward and had already proceeded to have a telephone conversation and had a labor figure on the job for the installation and I just gave him the okay.

\* \* \* \* \*

215 R. EDWARD WOOD

a witness called by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

216 BY MR. JEFFER S:

Q. State your name and address for the record, please, sir.

A. Edward Wood, business address, 297 West 54th Street.

Q. What is your business or occupation, Mr. Wood? A. Electrical contractor.

Q. And what company? A. Kammer-Wood, Inc.

Q. Do you participate in that business, sir? A. Yes.

Q. In the course of your duties do you ever go to the job sites of the various jobs? A. Yes.

Q. Could you very briefly tell us what duties you do perform or what you do in connection with your business? A. I guess I would call me the general manager. I go on the jobs as an observer more than anything else.

Q. Are various progress reports on the jobs made to you or anything of that nature? A. In an informal way, yes.

Q. Now, these are copies of some of your payroll records which we obtained yesterday and I will now hand you General Counsel's Exhibit Number 5 and ask you to look at it. A. (Examining) Yes.

Q. Now, in General Counsel's Exhibit Number 5, directing your attention to the Pan American job and directing your attention to the

217 column marked Wednesday, I notice that there is a row of sixes after each employee's name. Now, sir, do you know what that indicates or can you tell us what it indicates? A. Well, I believe that is the day the men walked off the job.

Q. Well, did you receive any reports of your men walking off the job? A. To the best of my knowledge, I was out of town at that time, and the next day --

Q. I mean did you subsequently receive any reports? A. Yes. I was told that the men had walked off the job.

Q. About how long had your company been working on the Pan American job, could you tell us roughly? A. I would just have to guess. I would say something like six months, but it is just a guess.

Q. Now, on this date, and for the payroll period ending February 10th, had your company completed the work at the Pan American job at that time? A. No.

Q. Do you still have employees working there, sir? A. Yes.

Q. At any time did you direct your employees to leave that job and not to work on the job? A. No, sir.

218 Q. Handing you General Counsel's Exhibit Number 7, and directing your attention to the Pan American job, according to that your employees worked only 7 hours on Monday, 3 hours on Tuesday and did not work the following days. Did you direct the employees to leave the job on that occasion? A. No, sir.

Q. Do you know if your employees walked off the job on that occasion? A. Yes, I am quite sure they did. There was work to be done and I wasn't there. I can't say, but they did walk off or else they would have been paid on this payroll and it would have been shown.

\* \* \* \* \*

226

TIMOTHY SULLIVAN

a witness called by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:



226

## DIRECT EXAMINATION

BY MR. JEFFERS:

Q. State your name and address for the record, please. A. Timothy Sullivan, 18101 Northwest 6th Place.

Q. What is your business or occupation? A. Electrical engineer.

Q. As an electrical engineer did you have any business relationship or perform any services on the Pan American Hospital job? A. I did the electrical engineering on the redesign.

Q. Do you know who the electrical contractor was on there? A. Yes, Kammer-Wood.

Q. Now, in the course of your business did you ever visit the job site at the Pan American site? A. Supervision is part of my job.

Q. While you were at the job site did you ever on any occasion have any conversation with any of the electricians on that job concerning CWA men coming on the job? A. Yes.

Q. Can you tell us when such conversation took place? A. Approximately in the middle of January. On the job, doing supervision, I had heard that Dade Sound and Controls was coming on the job and I asked the electrician foreman Dick Harrison, I believe, which his name is, whether or not he was going to walk off the job when the CWA men walked on the job and he told me that he had been instructed by the business agent to walk off the job.

Q. Did he name the business agent? A. No, he did not.

Q. Whereabouts on the job did this conversation take place? A. This was in the west patient wing, I think. Section 1.

Q. Was there anybody else present during that conversation? A. At that time I don't believe that anybody was present, no, sir.

Q. After that time did you have any other conversation with any of the other electricians on the job concerning the same subject matter or were present during such a conversation? A. Well, I was present the first time the electricians walked off the job. We had the Communication Workers come on the job, Dade Sound and Controls came on.

MR. GOPMAN: At this time, Mr. Trial Examiner, I want to move

228 to strike any statements made by Mr. Harrison who was a foreman, I understand, and cannot bind this Union in any way. It's hearsay and this Union is not responsible and there has been no showing that there has been any authority given to the foreman and I want to bring out that the reason I make it late was that I was surprised at this statement that Mr. Sullivan who testified at the trial of this case, the injunction trial, never mentioned this matter at the trial and completely omitted it from his previous testimony.

MR. JEFFERS: Perhaps he wasn't asked about it.

MR. GOPMAN: Yes, he was.

MR. DONOVAN: I will overrule the objection. Of course the issue of the Union's responsibility for the foreman's statement is one of the issues in this case, but I will allow the General Counsel to proceed.

MR. GOPMAN: I just make it at this time to show that we are not waiving our objection to this proceeding and to this type of testimony and I just wanted to bring out why it was late in coming.

MR. DONOVAN: All right.

BY MR. JEFFERS:

Q. You mentioned that you were there on the day the electricians walked off. Can you remember the date? A. Dates I can't remember.

229 Q. Can you remember the month? A. That they walked off? I think it was two months ago. This is April, February, in February they walked off the job.

Q. Well, on that particular day, the one you just mentioned, on that day -- A. Yes. I was standing in the lobby with Dick Harrison, the foreman, discussing some of the lighting layout and Mr. Statcavage was with us at the time, and at that time Mr. Tailor, a journeyman on the job, came up and said to Mr. Harrison, "We know they are on the job and we are not supposed to work with them." And at which time Mr. Harrison said, "I know it." And that was the conversation that I heard.

Q. Do you recall anything else said at that time? A. No. The same day, that afternoon, the electricians left the job.

Q. What time did you hear that conversation? A. That was

approximately 11:30 in the morning.

Q. You mentioned a Mr. Tailor, do you know Mr. Tailor's first name? A. John, I believe it is.

Q. And you said he is a journeyman? A. Journeyman on the job.

Q. A journeyman electrician you mean? A. A journeyman electrician.

\* \* \* \*

230

# CROSS EXAMINATION

\* \* \* \*

241

BY MR. GOPMAN:

Q. But after you found out that the Kammer-Wood people wouldn't get the job did you take any steps then? A. Yes, I tried to. The contract had already been let so I took steps then to have the job to proceed by having the electricians working during the daytime and the Dade Sound and Controls people working Saturdays and Sundays.

Q. Who did you take the steps with? A. With Statcavage.

242 Q. How come they came to the job when the electricians were there? A. This was the question I asked Mr. Statcavage.

\* \* \* \*

Q. Did you say that that was the question you asked Mr. Statcavage? A. Yes. I didn't know they were coming back on the job during the daytime. That was an agreement I made.

Q. Is it your testimony then that they were at the job prior to this time on Saturdays and Sundays prior to the first work stoppage? A. Not prior to the first work stoppage. I didn't know Dade Sound and Controls had the contract until such time as they walked on the job and the electricians walked off.

Q. You didn't know it at all? A. No, because Kammer-Wood, the day before had put in their estimate to Coker and Associates. I thought Kammer-Wood were still going to get it.

Q. You were with Harrison you said and Statcavage at the time that Tailor came up to you, weren't you? A. I was down there on normal supervision of the job.

Q. But you were there with Harrison and Statcavage? A. With Harrison, supervising the job, and Statcavage came on the job and a few minutes later Dade Sound and Controls walked on the job.

243 Q. Did you object to him being on the job at that time? A. I can't object to who the contractor is going to be.

Q. Did you do anything to prevent the work stoppage at that time? A. I told the electricians that these persons were AFL-CIO affiliates.

Q. Which electricians? A. I told Mr. Harrison too that he'd better get along with him, with other people conveying the same information, that he should get in touch with his business agent.

Q. Get in touch with the business agent? A. And several other people also.

Q. Before the work stoppage? A. At 11:30 in the morning.

\* \* \* \* \*

245

# MARVIN APT

a witness called by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. JEFFERS:

Q. State your name and address, please, for the record? A. Marvin Apt; Business Address: 1657 N.W. 17th Avenue.

Q. What is your business or occupation, sir? A. Assistant Business Manager.

Q. For who? A. I.B.E.W., Local 349.

Q. I see, and how long have you worked in that capacity? A. Approximately three years.

Q. About three years? A. Yes.

Q. Would you just very briefly tell us the duties of a business agent or about your duties, sir? A. My duties are to refer men to the jobs and to see that we have no problems.

Q. When you say refer men to jobs, I take it you have contracts with certain employers whereby they get employees from the hall?

A. That's correct.



Q. You have such a relationship with Burns and Jaeger? A. Yes, sir.

246 Q. You have such a relationship with Kammer-Wood? A. Yes, sir.

Q. Did you have such a relationship with R.L. O'Donovan? A. Yes, sir.

Q. Have you had this relationship with each of those employers for the past year? A. Yes, sir.

\* \* \* \* \*

248

### CROSS EXAMINATION

BY MR. GOPMAN:

Q. Is Mr. Wood a member of your local union? A. No, sir.

Q. Is Mr. Kammer a member? A. Yes, sir, he is.

249 Q. Kammer is? A. Yes, sir.

Q. Is Mr. O'Donovan a member of your union? A. No, sir, he isn't.

Q. Is Mr. Burns a member of your union? A. Yes, sir.

Q. Is Mr. Jaeger a member of your union? A. Yes.

Q. They are the gentlemen who own Burns and Jaeger? A. That is correct.

Q. And Mr. Kammer is one of the owners of Kammer-Wood?

A. That's right.

\* \* \* \* \*

NEIL D. MACMILLAN, JR.

a witness called by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

BY MR. JEFFERS:

Q. State your name and address, please? A. Neil D. MacMillan, Jr., 13140 S.W. 81 Avenue.

\* \* \* \* \*

250 Q. What is your business or occupation, sir? A. Technician and estimator.

Q. For who? A. Dade Sound and Controls.

Q. Will you just very briefly tell us your duties as technician and estimator? A. Well, when the reports on the job first come out I may

take off some plans or specifications to estimate the cost of the job to include equipment and labor or just labor. If we award a contract on the jobs, I sometimes make the installations myself or with Mr. Oliveira or other members of the company.

Q. You do make installations yourself? A. Yes, I do.

Q. Did you or your company ever do any work at the bowling alley construction for Village Crown Lanes? A. Yes, sir, we did.

Q. Can you recall when you first went to that particular job site?  
A. Yes, it was July 27, 1962.

Q. Now, what was the purpose of going to the job, at that time?  
A. I accompanied Mr. Statcavage out there to actually make a takeoff for the purposes of estimating. The only available prints on the job were  
251 out on the job.

Q. Do you know who the electrical sub on the job was? A. Burns and Jaeger.

Q. And while you worked the job site on that particular day, did you have any conversations with any electricians on the job or were you present during such a conversation? A. I had a conversation with Mr. Logan and then I was present during the conversation with Mr. Statcavage and Mr. Logan and a gentleman who was the job steward; I don't know his name.

Q. All right, sir, what time of day as near as you can remember did your conversation with Mr. Logan take place? A. I believe it was about mid-afternoon, it was after lunch.

Q. And where did this conversation take place? A. In the building where the telescore would have been mounted.

Q. Who else was present during this conversation? A. Mr. Statcavage and Mr. Logan.

Q. Could you tell us what was said, at that time? A. Well, Mr. Logan was present because if I remember right, Mr. Statcavage had some questions to ask him or questions to settle as regards the conduit and boxes and I was introduced to Mr. Logan as the individual that he would like to have performing the installations out there for them. At that

time, Mr. Logan asked if I was union and I said we were and he asked if  
 252 we were I.B.E.W. with Local 349 and I said no, that I held a CWA  
 card and then Mr. Logan said, well, he didn't think this was going to work  
 and that he'd have to check with the job steward and if I remember right,  
 Mr. Statcavage said, let's get this straightened away right now then, let's  
 get the steward, at which time, Mr. Logan went and got the steward and  
 I told the steward we were CWA and he said that he would not work with  
 me, that, if I came on the job that he would leave.

There was some more conversation there in regard to the telephone  
 people who also were CWA people if they came on the job would they work  
 with them and as near as I can remember the steward or Mr. Logan  
 either one of them answered they would work with them/as to whether  
 they would or would not work with them/and with that the steward left  
 and I presume to check, I don't know.

MR. GOPMAN: May I move to strike any reference to what he  
 presumes?

MR. DONOVAN: Yes.

BY MR. JEFFERS:

Q. Just tell us what you heard and saw? A. Well, with that the  
 steward left the group where we were and I told Mr. Logan that we had  
 a Board order or a cease and desist order or some papers that had been  
 sent to us by the Labor Board and I informed him that we had these things  
 and he said that he would tell the steward about it and he left. With that, why  
 Mr. Statcavage and myself continued to go over the prints and to check  
 253 out the various locations and things that we wanted one and that  
 was the end of that conversation at that particular time.

Q. Did you have any further conversations on that day? A. I  
 didn't, no. At least not with the electricians.

Q. Did anything else happen on that day? A. Well, later on Mr.  
 Statcavage as I said that he wanted to find out what the steward had  
 found out and the steward you could see him at the time there, he was on  
 the telephone--

MR. GOPMAN: I object to what he says Mr. Statcavage saw unless he saw the same thing.

THE WITNESS: Well, I was present, and he was present, and we could see him. There was a temporary phone installed on the job site and the steward got off the phone and then Mr. Statcavage asked him what the story was and then at first the steward didn't answer him and Mr. Statcavage pressed the point and he said, you will find out, and he went on about his business.

BY MR. JEFFERS:

Q. Did anything else happen that day? A. Later on I had a conversation with Tommy Adams.

Q. Who is Tommy Adams? A. He is the superintendent for construction and we were discussing the installation location of the closed circuit television camera and Mr. Logan came up and said that the electricians were leaving the job and that he had to go also and with that he  
254 left or at least walked away from our booth.

Q. Can you recall about what time of day that was? A. What time?

Q. Yes, as near as you can remember it. A. As near as I can remember it was mid-afternoon, at about 2 o'clock, three o'clock.

Q. Did you see any electricians on the job after that time, or did you, yourself, see them? A. I did see one electrician on the job but I am not sure whether he worked for Burns and Jaeger or whether he was working for Florida Power and Light. They were making a service change-over at the time and I don't know who he worked for.

Q. Were you at the Bowling Alley job on any subsequent occasions? A. Yes, I think we went out to the job about three or four days later to finish making the takeoff and to get the estimate for Mr. Statcavage.

Q. Do you or did your company, Mr. MacMillan, actually start the installation of the sound equipment? A. If we started it, no, sir, we did not.

\* \* \* \* \*

255 Q. You did do some subsequent work though? A. Yes, sir.



Q. Can you recall when you started the subsequent work? A. Yes, sir, we went back out on the job to install the interior or intercom system and to complete the sound system. It was the 13, 14 or 15th of September.

Q. Now, on the 13th of September, on that day, did you have any conversation with any of the electricians on the job? A. I, myself; no, sir, I did not.

Q. Were you present during any such conversation or did you hear any such conversation? A. I was present during one conversation that I know of.

Q. And who was that conversation between? A. Well, we had gotten on the job just prior to lunch time and Mr. Statcavage and myself and Mr. Oliveira were discussing the closed circuit television installation and Mr. Logan came up and asked us if we were on the job and if we were going to work and Mr. Statcavage made a reply that we were and Mr. Logan says, well, I'll have to leave, I have my orders and I have two strikes on me, now, so I have got to go and with that he left.

256

\* \* \* \* \*

Q. After lunch, did you observe any electricians working on the job? A. No, sir, not that I can remember on any day.

257

Q. The following day, did you observe any other electricians on the job? A. No, sir.

Q. And on the 15th; September 15th? A. The next time I saw an electrician was better than a week later.

Q. Now, was your company ever contacted by Coker with reference to doing some work with Miami Laundry and Dry Cleaning Company? A. Yes, we were.

Q. Did you have a contract to do that work? A. We did.

Q. Did you ever go to that job site? A. Yes.

Q. Can you recall the date when you first went to that job site?

A. As near as I can remember it was about the 3d week in September.

I don't actually have any records on it, I am attempting to tie it in with another job that we did at the same time.

Q. What other job was that? A. North Dade Motors, we did that, and I have time sheets on that and that was done early in September.

Q. On that occasion, do you know who the electrical sub on that job was? A. R. L. O'Donovan.

258 Q. Now, on this occasion, when you first went to the job, did you have any conversation with any electricians on the job? A. I myself did not; no.

Q. Were you present during any such conversations? A. Yes, I was.

Q. Who was that conversation between? A. Mr. Statcavage and the job foreman ~~ex~~ [and] the job steward.

Q. Can you recall the time of day that this took place, that is, do you remember if it was in the morning or in the afternoon? A. As near as I can remember it was in the afternoon.

Q. And where did this conversation take place? A. Inside the older section of the building.

Q. Can you tell us what was said on that occasion? A. Mr. Statcavage and I had a set of plans that were supposed to be shown for box locations and at a certain point and we couldn't find it and so we went looking for the electrical foreman to find out if they had left it out or whether it had been installed in a different spot than what was shown on our plans and we found the foreman and checked with him on these boxes that we thought were missing and he showed us where they were and I was introduced as being a man to look the job over to estimate it and the foreman asked if we were a union ship [shop] and I replied that we were, and he asked me if it's I.B.E.W. and I said, no, it's CWA affiliated with Local 196, so he didn't know if this would be acceptable or not.

259 Q. Tell us what he said? A. The foreman?

Q. Yes. A. He went to get the job or the shop steward at that point and [I] told him that I was CWA and [he said] that they would check into the thing and find out what the story was and let us know at a later date, when we came on the job to do it, and with that we proceeded to finish our tour and finally left the job.

Q. About how long were you on the job on that occasion? A. I'd say not more than an hour.

Q. Were you ever at that job site on any other occasion? A. Yes, sir.

Q. When was this in relationship to the first time you were there? A. About a week later, Mr. Statcavage informed me to pick up the equipment, to make the installation of Miami Laundry which I did and we went down to the job site and when we got there I started drawing all the equipment.

Q. Who is we? A. Mr. Statcavage and myself. In the meantime, Mr. Statcavage went looking for the foreman, for O'Donovan, and then I joined them and as I joined them the steward of the job came up and the conversation was primarily between Statcavage and the job steward.

260 Q. Do you know the name of the job steward and job foreman by the way? A. No, sir, I do not. I attempted to get it, at that time, but they wouldn't give it to me.

Q. How did you try to get it? A. During the course of the conversation I had asked the steward why he wouldn't work with me, that I was a CWA member when he was working with CWA telephone men who were working on a panel at that time and he said, no comment, and as he walked away I asked the foreman who that was or what that man's name was and he wouldn't give it to me, and I asked him what his name was and with that he just turned around and walked away, and so I never did find out what their names were.

Q. Will you relate to us, please, the conversation that you can remember Mr. Statcavage had with the two men? A. Well, Mr. Statcavage - he had already started to talk to them when I arrived there and when I joined them the conversation was why we couldn't do the job, that we were CWA people and the telephone company were CWA and they worked with phone people and why couldn't they work with us, and the statement made by the steward was that they had fellow members of the union that could do that work and that he felt that they could do it and while we were in that discussion, Mr. Fonda came up, who I had worked with on another job.

261 Q. Mr. Who? A. Mr. Fonda.

Q. Mr. F-o-n-d-a? A. Yes.

Q. Identify for us if you will please, Mr. Fonda? A. As far as I know, he is a member of the I.B.E.W. He is a sound journeyman whom I worked with on other jobs and he walked up to report into the foreman to inform him what time he had left the hall and what time he had gotten to the job and also to inform him that another sound man was on the way out to the job and it was at this point that I started to question the steward about why he was working with the telephone people and why he didn't work with us?

Q. Well, was Mr. Fonda there for the purpose of performing work for you? A. No, he was not.

Q. Do you recall anything else that was said? A. There was a conversation going on between Mr. Statcavage and the job foreman, but I can't remember now what it was because at that time I was talking to the steward.

Q. Did your company perform the work at that job, that is, did Dade Sound perform the work? A. At the Miami Laundry?

Q. Yes. A. No, we subsequently got a cancellation contract.

263

Q. Will you relate the conversation for us?

THE WITNESS: Mr. Laschower asked me who I was and I told him Dade Sound and he said, okay, and he left.

BY MR. JEFFERS:

Q. Then what happened, if anything? A. He came back upstairs and about fifteen minutes later and he said that Bob said you have some papers that would let you work on this job and I told him I have lots of papers and he asked if he could see them. I said, yes, he could. I took him down to my car to where I had the Board order and by that time the consent decree from the 5th District and I showed them to him and he looked them over and he made the statement, he said, well, they are kind of outdated, aren't they?



265 MR. JEFFERS: At this time, I would like to mark as General Counsel's Exhibit No. 9, for identification, the decision and order issued by the National Labor Relations Board in Case No. 12-CC-223, Local 349, I.B.E.W., AFL-CIO and Dade Sound and Controls and I would also like to mark for identification as General Counsel's Exhibit No. 10, the Court Decree, for the 5th Circuit, styled, N.L.R.B., Petitioner vs Local 349, AFL-CIO, entered October 17, 1962.

\* \* \* \* \*

267 (Thereupon, the documents above referred to as General Counsel's Exhibits 9 and 10, were received in evidence) \* \*

\* \* \*  
BY MR. JEFFERS:

268 Q. Now, Mr. MacMillan, did your company ever do any work at the Publix warehouse? A. No, sir, we did not.

Q. Were you ever at the job site? A. Yes, we were.

Q. Can you recall when you first were at that particular job site?

A. February 4.

Q. Of what year? A. 1963.

Q. Now, do you know who the electrical sub on that job was?

A. Yes, sir.

Q. Who was that? A. Kammer-Wood.

Q. While you were at that job site, did you have any conversation with or were you present during any conversation with any of the electricians on that job?

269 A. Yes, we were.

Q. And who was that conversation between? A. The first conversation was with Mr. Stamp who identified himself as the steward and he asked us what we were doing on the job.

Q. Who is us, you said asked us? A. Mr. Oliveira and myself and Mr. Statcavage.

Q. And where did this take place? A. Within the building in the produce section, if I remember right, which is on the east end of the warehouse and Mr. Stamp asked us what we were doing and Mr. Statcavage replied that we were there to look at the job, or to look it over, and that we were going to do the installation of the paneling sound system.

Q. What did Mr. Stamp say to that? A. He asked us if we were union and if we had a card and he showed me his card and I showed him mine and I don't know if Mr. Oliveira was asked for his card or not, and he said CWA and he started to walk away and Mr. Statcavage informed him that he had been out previously to the job and had talked to the job foreman and that he had gone over the fact that we were CWA at that time with the job foreman and that he had said that there would not be any problems and that if he had any questions concerning this to check with the job foreman.

270 Q. Then what happened? A. We proceeded to survey the building and on completing the tour of inspection on the inside we headed towards the construction trailer and Mr. Statcavage had to make a telephone call to his office and then he wanted to introduce us to Mr. Newsom and to Mr. Goldsmith who he had pointed out once before. And so we went over to the construction trailer and Mr. Statcavage attempted to make his call and for some reason he couldn't make it and he said, let's go find Mr. Goldsmith.

Q. Now, who is Mr. Goldsmith? A. Mr. Goldsmith is the construction superintendent for Publix Markets, and as we went up the steps to the loading platform we saw the gentleman who had asked for our cards earlier, Mr. Stamp and two other men, one of which Mr. Statcavage said was Mr. Goldsmith and the other one was Mr. Browning the electrical foreman on the job.

As we were walking towards them, Mr. Goldsmith motioned for us to come over there and as we drew up, Mr. Goldsmith said to Mr. Statcavage, I want you to hear what these fellows have to direct or to say and with that Mr. Stamp said he would not work with us, that if we came on the job that they would have to leave.

Mr. Statcavage wanted to know why, that we were CWA, and that we were union and that we paid the dues the same as they did and that we should be allowed to work on the job.

271 Mr. Stamp stated that he felt that because they had fellow, brother members of the I.B.E.W. that were qualified to do the work, that he felt that they should do it, and again if we came on the job that they would have to leave.

About this time, Mr. Goldsmith interjected about the completion of the system and when it had to be done and stated that there didn't seem to be any particular rush on it and with that, Mr. Statcavage said, let's cut it off right here and we'll let Pete decide it and with that we went to the trailer to try and find Mr. Newsom.

Q. Then what happened, if anything? A. On the way over, Mr. Oliveira and myself went to the telephone to try and call our office to get a hold of our agent, and while Mr. Oliveira was on the phone Mr. Statcavage motioned for one of us to come to the trailer.

Mr. Oliveira stayed on the phone and I went into the trailer with Mr. Statcavage and to wait for Mr. Newsom.

Q. Where was Mr. Stamp? A. He was with Mr. Statcavage.

Q. Was there any other conversation? A. After about an hour or forty-five minutes, Mr. Newsom was free and Mr. Statcavage asked to talk to him and he said come on in, and we went in and we all got into one end of the trailer and it was all divided off into a smaller office, and Mr. Statcavage said to Mr. Newsom, he said, you know when we  
272 signed the contract that we were not union but that we did hire union people to do our work. Now, that we have hired these people and they are out here on the job to work, they can't work, why?

And Mr. Newsom asked why not, and Mr. Statcavage said, well, you'll have to talk to this gentleman, indicating Mr. Stamp the steward, and Mr. Newsom asked him what his story was on it? And Mr. Stamp related, he again related that due to the fact that they had fellow members in their union that they felt were qualified to do this work, that they should do it and they could not work with us if we came on the job.

And about this time, I brought up the fact that there was a consent decree issued and I couldn't understand what all this nonsense was about, that we should be allowed to do the work and Mr. Goldsmith made the remark that the consent decree was binding upon the union and not upon the individual and that if the individual wanted to go fishing he could or if he wanted to get sick, he could.

Q. This is what Mr. Goldsmith said? A. Mr. Goldsmith said in relating this information to Mr. Newsom.

Q. Go ahead. A. And with that, Mr. Stamp stated, that's right, and about that time Mr. Goldsmith went out to place a telephone call and Mr. Statcavage left and then Mr. Stamp left and I was there by myself. So I  
273 walked outside the trailer.

Q. Was there any further conversation with Mr. Stamp? A. With Mr. Stamp, no, I did not.

Q. Now, did your company do any work at the Pan American Hospital job? A. Yes, sir we did.

Q. Were you ever at the job site yourself? A. Yes.

Q. Do you know who the electrical sub-contractor on that job was?  
A. Kammer-Wood.

Q. Did you ever have any conversation with any electrician on the job while you were at the job site? A. Yes, sir.

Q. Can you remember when you first had such a conversation?  
A. With Mr. Tailor.

Q. Pardon me? A. With Mr. Tailor.

Q. Can you remember when? A. The 6th of February.

Q. Of this year? A. Yes.

Q. 1963? A. That's right.

Q. And it was with Mr. Tailor? A. Mr. Tailor, yes.

274 Q. Was anybody else present during that conversation? A. Mr. Oliveira.

Q. Anyone else? A. No, sir.

Q. Where did that conversation take place? A. In one of the patient's rooms in the surgical wing.

Q. Can you recall the time of day? A. About mid-morning, prior to lunch time.

Q. Will you tell us what was said on that occasion?

\* \* \* \* \*

THE WITNESS: Mr. Tailor asked us what we were doing and I informed him that we were putting in the nurse call system. He asked me if we were union and I said we were. He asked me if I had a card and I said I did. He said, could he see it? I said, yes, and as I showed him my



card he showed me his. He looked at my card and mumbled something CWA and handed it back to me and said, okay, and left the room.

BY MR. JEFFERS:

Q. All right, then what happened, if anything? A. Mr. Oliveira and myself continued pulling wire and about a half hour later a man came  
275 into the room and identified himself as Dick Harrison, the job fore-  
man, and he said, could I see your card for a minute? He said, we are  
having a discussion and he said there is a question we have and so I'd  
like to inspect your card.

I said, certainly, and I showed him my card and he thanked me and  
he gave it back to me and left the room, and Mr. Oliveira and myself  
continued to work.

\* \* \* \* \*

Q. Just tell us about any conversations with any of the electricians;  
did you have any further conversations? A. After Mr. Harrison left the  
room, I had no further conversation that I can remember with any of the  
electricians pertaining to this matter. I mean, there was a question with  
Mr. Harrison as to boxes that we couldn't find which he subsequently  
located for us.

Q. How long did you remain on the job that day, the Pan American  
Hospital job? A. The rest of the day.

276 Q. Do you know if the electricians remained on the job for the full  
day on that day? A. No, sir, they did not.

Q. They did not? A. No.

Q. When after the day you told us about, when was the next time  
you were at the Pan American job? A. The next time?

Q. Yes, if you can? If you can remember? A. I can remember it  
was around the third week or around the 19th of February.

Q. I didn't hear you. A. About the 19th of February.

Q. Do you recall what day of the week it was? A. It was in the  
beginning of the week either a Monday or a Tuesday; I believe it was a  
Tuesday.

Q. What time was it when you got to the job on that day? A. Late

in the afternoon, I had gone out to take some wire measurements.

Q. How long did you remain on the job that day? A. Two or three hours.

Q. Do you know if there were any electricians on the job when you arrived? A. Yes, there were.

Q. Do you know if the electricians continued to work the entire day on that occasion? A. Myself, personally; no, sir. I left the job and they weren't there.

Q. After that, when did you next return to that particular job? A. Well, about that time there seemed to be a big stink going on about when we should work and we were asked --

MR. GOPMAN: Objection to anything they were asked.

MR. DONOVAN: Who said this?

THE WITNESS: Mr. Sullivan and Mr. Statcavage made arrangements for the electricians to work during the days because they were behind in their work and for us to work evenings and weekends. The next time that we returned to the job after this agreement was made was the 21st or the 22d, it was towards the end of the week.

BY MR. JEFFERS:

Q. Was this on a Saturday? A. We also work on Saturday, but the first and next time was in the evening.

Q. That was in the evening when you went back to the job? A. That's right.

Q. Did you ever return to that job on a weekday or during the day? A. Yes, the next time we went on the job was during the day. We could no longer afford to work at night, and so we went on the job, it was around March 4.

Q. What time of day was it when you went to the job? A. Geez, I don't remember the next time we went back, but I think it was early in the morning about 8:30 or 9 o'clock.

Q. When you say, we, who do you mean by we? A. Mr. Oliveira and myself.

Q. Did you ever go back to the job yourself? A. As I stated I

was there one time on the 19th of February.

Q. I mean, after that? A. No, the nights we worked it was Mr. Oliveira and myself and two other mechanics; three other mechanics.

Q. After you returned on March 4, then how long did you continue to work on that job? A. We have been on the job since that time off and on. We worked all of that week with the exception of the day that we had to go to the union downtown and we have been on the job fairly steadily since then.

\* \* \* \* \*

282

# CROSS EXAMINATION

\* \* \* \* \*

287

BY MR. GOPMAN:

Q. Now, you said, while you were with Dade Sound and CWA that foreman and stewards have checked your card? A. I stated while I was with Dade Sound? No, sir.

Q. Well, you say that foremen always check your card? A. You are referring to when I was with the I.B.E.W.?

288 Q. At the present time, when you were with CWA, foremen come around and check your card or have checked your card, foremen from the I.B.E.W.? A. Yes.

Q. Which jobs were those on? A. Pan American, Mr. Harrison asked me for my card.

Q. Which others? A. Northwest Baptist Church.

Q. Northwest Baptist Church? A. Yes.

\* \* \* \* \*

289

Q. You knew Mr. Tailor was not the union steward? A. I didn't know who he was at the time. He didn't identify himself as to whether he was or wasn't. Just showed me his card and it doesn't state.

Q. You subsequently learned that he was not a union steward? A. That's correct, I didn't know at the time whether he was or not.

Q. But you know now that Tailor was not a union steward? A. I still don't know for sure, I have been told that he is not.

\* \* \* \* \*

290 Q. After March 4 when did electricians appear on the job again?

291 A. March 11.

Q. Was it the same electricians that appeared on the job that were there before? A. No, sir.

Q. A different crew of electrical employees? A. Yes, sir.

Q. And they worked there without any difficulty? A. That's right; excellent cooperation.

Q. They were then not the same ones who were there before? A. No, sir.

Q. And on the first day that you appeared on the job and were working you testified that you had to get some help from Harrison? A. That's right.

Q. He gave it to you, didn't he? A. That's right.

Q. He showed you where the boxes were? A. That's right.

Q. Without that you would have wasted a lot of time looking for them because you couldn't find them? A. That's correct.

Q. And that was after he knew you were CWA? A. That's right.

\* \* \* \* \*

295 Q. By the way, does Statcavage have another name as something else or is he sometimes called Bill Stack? A. In business he is referred to as Bill Stack.

\* \* \* \* \*

296 Q. When you spoke to Mr. Stamp, or when he was present, or when you were present during his statements to other persons that is Mr. Statcavage and Mr. Goldsmith and Mr. Newsom, didn't Mr. Stamp or let me ask it this way....what exactly was Mr. Stamp's language, or what exactly did he say with respect to not working? A. Which time?

Q. Well, there was only one day that you spoke to Mr. Stamp. A. But on these three different occasions, four; well, no, three.

Q. What did he say on each one of those occasions? A. The first occasion he made no reference to working or not working. He just checked our cards. The second occasion was on the loading platform just inside the loading platform, and he made the statement to the effect



that they had other members of the union who were qualified to do this sound work and if we came on the job he wouldn't work with us.

297 Q. Where was this, and who was present? A. Inside the warehouse and also inside the construction trailer.

Q. And he said what now? A. That there were fellow members of the brotherhood that could do sound work and he felt they should do it.

Q. He said the same thing both times, or framed it a little bit differently each time? A. Yes.

Q. And your statement now is that he said that he wouldn't work with these men because he had fellow members in the union who could do this work? A. He also said that.

Q. And what else did he say again? You said, he also said that, what did he say any different than that? A. On which occasion are you talking about?

Q. You are talking about the second and third times that you spoke to him apparently because you said the first time he didn't say anything? A. In reference to working, no, he did not.

Q. And on both of those occasions if he said the same thing I'd like for you to tell us? A. That he had fellow workers in the Local who were qualified to do sound work and they felt that they should do it and he felt he wouldn't work with us if we came on the job.

298 Q. His statement was that he could not work with you if you came on the job? A. That we could not work, also, and when he was pressed on we, he switched to I.

Q. Who pressed him? A. Mr. Statcavage.

\* \* \* \*

Q. He said that he would not work? A. That is correct.

Q. So according to you, Stamp would sometimes say I would not work, I will not work and sometimes he would say they would not work?

A. That's right and the statement of not working was repeated several times.

Q. Saying - A. Either I or we.

\* \* \* \*

300 Q. And, at that time, did he say that he would not work because  
of that reason? A. I believe he did, as near as I can remember, he said,  
that he wouldn't work.

\* \* \* \* \*

306 REDIRECT EXAMINATION

BY MR. JEFFERS:

\* \* \* \* \*

307 Q. On cross examination you stated that since March 11th the  
electricians have worked on the job with you and that there has been no  
trouble whatsoever, is that correct? A. Yes, sir.

Q. Do you know if a federal judge issued an injunction concerning  
the work on the Pan American job? A. As far as I know, yes, sir.

Q. Do you know when that injunction was issued? A. The hearing  
was March 7th, I believe it was issued on the 8th, which was a Friday.

Q. It was issued on the 8th which was a Friday? A. Yes, sir.

\* \* \* \* \*

310 ALBERT R. OLIVEIRA

a witness called by and on behalf of the General Counsel after being  
duly sworn, was examined and testified as follows:

311 DIRECT EXAMINATION

BY MR. JEFFERS:

Q. State your name and address for the record please? A. Albert  
R. Oliveira, 19320 Northeast 2nd Avenue.

Q. State your business or occupation please? A. I am President  
of Dade Sound and Controls.

\* \* \* \* \*

Q. Now, what are your duties with the company, sir? A. I do  
some of the estimating on certain types of work, for example, all master  
antenna work, I do all the estimating on that, inter-communication work,  
and also work with the tools.

\* \* \* \* \*

314 Q. Now, were you ever at the Publix warehouse job? A. Yes, sir.

Q. And on any occasion while you were at the Publix warehouse

job did you have a conversation with any electricians or were you present during such a conversation? A. Yes, sir.

Q. Can you tell us when that was? A. It was on February 4th at about 2:30 in the afternoon.

Q. February 4th of 1963? A. Of 1963, that's right.

Q. And where did this conversation take place? A. The first conversation took place in the office area of the produce warehouse section.

Q. Can you recall who was present? A. It was Mr. MacMillan, Mr. Statcavage and Mr. Stamp. At that time I didn't know who he was but I later found out he was Mr. Stamp.

Q. Do you know Mr. Stamp's first name? A. Fred.

315 Q. All right, sir, will you tell us what was said on that occasion?

A. MacMillan and Statcavage and myself, MacMillan and myself were receiving instructions and going over the layout of the inter-com system for the produce section of the plant and while going over that, Mr. Stamp approached us and asked what we were doing and Mr. Statcavage said he was from J. M. Coker and he had a contract for installing the industrial panelling system and inter-com system for the building. And Mr. Stamp asked if we were union, and we informed him we were, and he asked if we had a card and, MacMillan and myself, and MacMillan pulled out his card and showed it to Mr. Stamp and I also showed him my card.

And Mr. Stamp looked at the cards and then said CWA and he proceeded to walk away. And just as he was walking away Mr. Statcavage, in a little louder voice, because he was going away from us, hollered to him the fact if there was any difficulty to contact with Mr. Browning because he had cleared this with him a week or two earlier.

Q. Then what happened, if anything? A. We continued surveying the produce section of the warehouse and in doing so we spotted Mr. Newsom, he was busy doing something, and it was at that time that we thought it would be a good idea for MacMillan and myself to meet Mr. Newsom and Mr. Goldsmith, the superintendent, in the event we ran into

316 any problems.

Q. Were you present during any other conversation involving Mr. Stamp on that day? A. Yes, about a half hour later.

Q. And where was this second conversation? A. The second conversation took place on the grocery warehouse platform by the doors near the grocery warehouse office.

Q. And who was there at that time? A. At that time it was Mr. Goldsmith, Mr. Stamp, Mr. Browning, Mr. Statcavage, Mr. MacMillan and myself.

Q. Do you know who Mr. Goldsmith is? A. He is the construction superintendent for Publix.

Q. Can you tell us what was said on that occasion? A. Well, we had been looking for Mr. Goldsmith after Statcavage attempted to make a phone call and we were walking toward the individuals, Goldsmith, Stamp and Browning came toward us and as they did Statcavage said, "There is Goldsmith now." And as we looked up he motioned for us to go towards them which we did. And as we approached Mr. Goldsmith he said to Statcavage, "I want you to hear what these fellows have to say." And Statcavage by that time, we all went together, and Statcavage asked, he said, "What is the problem?" And Mr. Stamp then informed him at that time that if we came on the job that he couldn't work with us.

317 Q. Can you recall anything else that was said? A. Well, Mr. Statcavage and Mr. Stamp were doing most of the talking and I do know during the conversation Statcavage also asked Mr. Browning whether or not he would stay on the job and he said no, he would leave, and Statcavage asked him, "Well, what is your reason?" And he said that his reasons were personal and that he was entitled to go.

Q. And do you recall anything else that was said on that occasion? A. Mr. Goldsmith, or Statcavage mentioned the fact that a decision should be left up to Mr. Newsom and I believe Mr. Statcavage and Stamp went looking for Mr. Newsom.

Q. Did you accompany them? A. At that time, no, I don't believe that I did because I figured that at this time I should contact my business agent and proceeded to do so.



Q. Now, were you ever at the Pan American job? A. At Pan American, yes, sir.

Q. Now, at the Pan American job did you have any conversation with or were you present during any conversation with the electricians on the job? A. Yes.

318 Q. Can you recall the first time or tell us when? A. The first time we went on Pan American was February 6th.

Q. At about what time? A. Of 1963, and that was about, we got there at some time between 10:30 and 11 o'clock.

Q. When you say we who do you mean? A. MacMillan and Statcavage.

Q. And on that occasion did you have any conversation with one of the electricians or were you present? A. I was present at that conversation.

Q. Between who? A. MacMillan and Mr. Tailor.

Q. I see. And where did this conversation take place? A. This conversation took place in the maternity wing of the hospital in one of the patient's rooms.

Q. Was anyone else there? A. No, sir.

Q. Can you tell us what was said on that occasion? A. MacMillan and I were pulling cable from the toilet stations to the patients' stations and Mr. Tailor came into the room and asked MacMillan what he was doing and MacMillan informed him that he was putting in the nurses' call system.

319 Q. All right, go ahead. A. And Tailor asked him if he was union and he said he was and he asked him for his card and I believe Tailor pulled out his card first, or a slip, a yellow identification slip with the IBEW on it and MacMillan proceeded to show him his card and that was it, he left the room.

MR. GOPMAN: Mr. Trial Examiner, I refrained from objecting, but I trust that I will be given a continuing objection to all of the instances where no steward was present and where people who are not associated and affiliated with the union were referred to so that I won't have to keep objecting all the time.

\* \* \* \* \*

BY MR. JEFFERS:

Q. On that day did you have any further conversations with any electricians or were you present at any conversations involving the electricians? A. At one instance, about a half hour later, Mr. Harrison, we were in one of the other rooms, when Harrison came in and asked if he could see one of our cards again. He said they were having a discussion as to whether we were AFL-CIO affiliated and MacMillan pulled out his card and I reached for mine and he left and that was our last contact that day.

Q. Did you stay on the job all day on that day? A. Yes, sir.

Q. Do you know if the electricians worked the entire day on that day? A. They were not there when I left the job that afternoon.

Q. Did you say anything else to any electricians prior to leaving or did you hear any of them make any remarks as they left on that day?

320 A. Yes, sir, I did.

Q. And where was this? A. In the temporary parking lot of the building area.

Q. And who was present on that occasion? A. It was myself and MacMillan, we were in his automobile getting ready to go to lunch, at about 12:15, 12:10.

Q. And who else was there? A. Well, MacMillan and I were getting ready to leave to go to lunch and there was an automobile in the driveway half way so that we couldn't get out of the lot and on one side of the automobile there was Mr. Browning, he was one, and Mr. Taylor, one of the others, and one or two others. They were electricians who I recognized at the time.

Q. Do you know the other names? A. No, sir, I do not.

Q. Did you hear any conversation at that time? A. Well, I was on the passenger side closest to them and at the time I was sitting there waiting for MacMillan to drive out and I heard a statement that under no circumstances say that you are sick and upon this remark somebody stated, "Well, I look sick, don't I?" And the group proceeded to laugh

at that. And they broke up and four of them got into one car and two walked away the other way.

Q. Who was driving the one car, do you know? A. I am quite sure  
321 it was Tailor.

\* \* \* \* \*

# CROSS EXAMINATION

\* \* \* \* \*

BY MR. GOPMAN:

Q. You have a contract as an employer with the CWA? A. I do.

322 Q. You are a union member? I am.

\* \* \* \* \*

328 Q. Now, let's go over it. I just want to make sure what you said about what the employees who were at the Publix job had said after you were called by Goldsmith. Is it your testimony, or what did the steward say when you were called over by Goldsmith or when you and MacMillan and Statcavage were together? A. When we approached the group?

Q. Yes. A. Mr. Goldsmith made the first comment about the fact to Statcavage that he wanted Statcavage to hear what these men had to say and upon that Statcavage said, "Well, what is the problem?" And Stamp made the first comment to the fact that he couldn't work with us and Statcavage, I believe, at that time asked him why and he said he just couldn't work with us.

Q. Wasn't it a fact that he may have said that I won't work with these fellows? A. He might have, yes.

Q. And you are not sure what it was. It's either I can't or I won't work with these fellows? A. That is correct. He might have indicated I can't, I won't, but he couldn't have said anything --

Q. You limited it to I can't or I won't work with these fellows?

329 A. It's either he, I, I am not sure, because in the course of the conversation, sir, there was a lot of inferences thrown around.

Q. As far as you recall when you made the statement all you remembered was that, I can't, or I won't, work with these fellows? A. As far as I know.

Q. And when asked why he wouldn't work with these fellows he said only that they were CWA members, is that right? A. Right. He said that and also he said something about the fact that they had other members in their local who were sound members, who were qualified to work, and brother members, he called them.

\* \* \* \* \*

335

Wednesday, 1 May 1963  
1200 S.W. First Street  
Miami, Florida

Pursuant to adjournment, the above-entitled matter came on for further hearing at 9:30 o'clock A.M.

\* \* \* \* \*

337

MR. GOPMAN: At this time I would like to briefly make some motions. \*\*\*

Now, that motion has two separate parts. Now I would like to move to strike, to dismiss the complaint first of all on the ground that the General Counsel has failed to prove and carry the burden of proof and it was his burden to prove that the union was responsible for any of the alleged activities that occurred in that, one, in each instance where any

338

act occurred I don't think that any of the acts have been shown to be violative of the Act, but in each instance where anything occurred it was done with individual action by the steward or job foreman involved, that other employees did not overhear or take part in any of the action that the steward engaged in in engaging in individual action and on the occasions where some other member of the union did hear about it this member of the union was always a job foreman who was not bound by the steward or was not required by the steward or who was not under the control of the steward, not under his direction in any way, was not responsible to the steward or to the union.

And so the General Counsel has failed to prove any such responsibility.

\* \* \* \* \*

344

In the instant case the union's constitution and by-laws imposed



no specific obligation on its foremen members to employ only those who are union members or who had been cleared by the union for employment. Indeed they do not even state that the foremen members are to be vested with hiring authority on jobs subject to the union's working rules nor do they impose a direct specific obligation on foremen members as they do for example on job stewards to enforce compliance with the union's working rules.

\* \* \* \* \*

354

## MARVIN APT

a witness recalled by and on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. GOPMAN:

Q. Mr. Apt, will you state your name and address again for the record please? A. Marvin Apt, business address, 1657 Northwest 17th Avenue, Miami.

Q. What is your position with the Defendant Union? A. Assistant Business Manager.

Q. How long have you been so engaged? A. Approximately 3 years.

Q. How long have you been a member of the Respondent Union?  
A. Approximately 15 years.

Q. Are you an electrician in the field? A. Yes, sir.

Q. You were employed at the craft? A. That's right.

Q. Now, Mr. Apt, as such business agent, do you participate in the setting of policy decisions for your local union? A. Yes, sir.

Q. Are you on the Executive Board? A. No, sir.

Q. Do you decide your policy and position with Mr. Callahan, the head business agent? A. That is correct.

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\* \* \* \* \*

Q. Okay. Now, does your union have any policy at all with respect to stewards and how they are appointed? A. Yes, sir, we do.

Q. How are stewards appointed or designated by your local union?  
A. Stewards are appointed by the business Agent. A letter in turn is sent

to the steward with a card identifying him as a steward, whether it be job or shop with the name of the job on it or shop steward with the name of the shop and he is required to turn that card in at the time the job is finished or at the time he is removed from being steward and a letter in turn is also sent to the job informing the job who the steward will be on the job.

Q. Now, directing your attention to the Pan American job, which was testified about here, do you recall who the sub-contractor on that job was? A. The electrical sub-contractor?

Q. Yes, the electrical sub? A. Kammer-Wood.

Q. Do you recall whether or not the union appointed a steward on that job? A. No, sir, we did not appoint a steward on that job.

356 Q. Was any letter ever sent to Kammer-Wood notifying them of the appointment of a steward? A. No, sir, there was not.

\* \* \* \* \*

Q. Does your union have any policy at all with respect to job foremen? A. No, sir.

Q. Who appoints the job foreman? A. Whatever job they are working for, their employer does.

Q. Does the union have any control over the job foremen? A. No, sir, we have no control.

357 Q. Does the union control whether the employer can retain the job foreman or not? A. No, sir.

Q. Does your union have any policy that appears in its by-laws or in its constitution or in any minutes or is generally publicized against working with or against the members of the union working with other employees who are non-union? A. No, sir, we have no policy of that type.

Q. Has anybody ever been disciplined, reprimanded, brought up on charges by the union if they worked with employees who were non-union? A. No, sir, not to my knowledge did that happen.

Q. While you were a business agent has this ever occurred? A. No, sir..

Q. Does your union have any policy with respect to the men working on a job where there is no job steward? A. No, sir.

Q. The men are permitted to work on the job even though no job steward is there? A. Yes, sir. There are quite a few jobs around at the present time in Dade County that do not have job stewards on them.

Q. Now, does your union have any particular policy in reference to job stewards with respect to the men working there if the job steward is not there? A. No, sir, we have no rule.

358 Q. If a steward leaves the job do your by-laws and constitution require the men to leave the job? A. No.

Q. Has anybody ever been disciplined, reprimanded or brought up on charges? A. No, sir, I have never known it to happen.

Q. Now, directing your attention to the Pan American job, did you ever have any conversations with any of the employers or the supervisors on that job after any of the work stoppages occurred? A. Yes, sir, I did.

Q. Okay, and with whom did you have this conversation? A. I had a conversation with Bill Brush over replacing the men on the job.

Q. Who is Mr. Brush? A. He is the superintendent for Kammer-Wood.

Q. Do you recall exactly when this took place? A. I believe it was about the first week in March. I don't remember the exact date but I believe it was the first week in March.

Q. Prior to this time, did you have any knowledge of any troubles or work stoppages on this job? A. No, sir.

359 Q. Is the union always informed when some troubles occurs on the job? A. No, sir, a lot of times we don't hear about it.

Q. Now, you say you had a conversation with Mr. Brush the first week in March, what was the conversation about? Tell what Mr. Brush said to you and what you said to him? A. Well, the whole text of the conversation was the fact that Mr. Brush said that the men didn't want to work on the job and that he was having difficulty manning the job and I told him I would have no objection to sending him more men if we or he wanted to order more men that we had men out of work and that there would be no problem in giving him more men and I don't remember

his exact words, but I think he said he was going to see if he had men in the shop where they could move off the job, and if he couldn't contact those men, he would contact me to get him more men.

Q. Did he subsequently replace the men? A. Yes, he replaced the men on that job.

\* \* \* \* \*

360 Q. What did you tell Mr. Laschower? A. I told him that I didn't have any objection to his not working with him but that if he left the job and Kammer-Wood wanted more men to replace him I'd be required to send them to them.

\* \* \* \* \*

#### Cross Examination

362 Q. Do you know a man by the name of Ray Mathes also with CWA ?  
A. Yes, sir, I know him.

363 Q. Isn't it true that Dade Sound was working on the Miami Laundry [Library] job and that you called Mr. Ray Mathes and he referred you to Mr. Dave Finn? A. Yes, sir, I spoke to Mr. Ray Mathes at the time.

Q. And did he not refer you to Dave Finn? A. He referred me to another man, I don't recall his name now though, no, sir.

Q. I see, didn't you subsequently telephone this other man? A. Yes, sir, I called another man, but I don't recall his name, at this time.

Q. And didn't you tell him the work that was being done by Don McMillan was under L.B.E.W. jurisdiction? A. I am very sorry, but I don't recall that conversation at all.

Q. You can't recall anything like that? A. No.

Q. What was your purpose in calling him, can you recall that?  
A. There was some problem on the job, at that time, and the men were trying to walk off the job, and I got them altogether and convinced them that they should go back to work, at that time and they did go back to work, and they did not leave the job.

Q. Still, do you recall your purpose in calling him? A. Yes, sir, it had to do with the men wanting to leave and I had never heard of this company that was over there and they said call Ray Mathes that he would tell me about them and when he told me I told the men and.



364 explained it to them, that they should go back to work.

Q. Was this before or after the charge was filed that they should go back to work? A. That was right, at that time.

Q. Isn't it true that this man you called mentioned [was named] Mr. Finn and [he] told you as far as he was concerned it was CWA work and [you said] if that is your position I am going to have to pull the men off? A. I don't recall the conversation with Mr. Finn.

Q. You make a statement like that and can't recall it one way or the other? A. Well, that's been approximately one year ago, hasn't it?

Q. You can't tell me now whether or not you made a statement like that? A. No, sir, I am sorry, I can't.

Q. That if Mr. Finn said you made such a statement, you would deny it? A. I wouldn't be able to deny it or state that I made it.

\* \* \* \* \*

365 Q. All right. Now you say you have no policy with respect to your men working with non-union men, is that correct? A. That is correct.

Q. But also you say it's common for your men to ask other people on the job whether they are union or not? A. Yes.

Q. Now you mentioned a telephone call with Mr. Bill Brush and you said you thought it was the first part of May [March]. Did I hear you right? A. I believe so, yes, sir.

Q. And you testified that these men were subsequently, and that were working on the Pan American job, were subsequently replaced with other men, is that correct? A. That's right.

Q. Was this replacement before or after the Federal Court issued an injunction? A. It was after.

\* \* \* \* \*

366 Q. What is the function of the job steward, Mr. Apt; just what is the purpose of having a job steward? A. Generally to help me on the job to keep problems down.

Q. Well, if there are problems what is the steward supposed to do? Is he supposed to contact you? A. No, sir. He is supposed to try and straighten them out if he can.

Q. If he can't straighten them out what is he supposed to do?

A. Then he generally tries to contact me, yes, sir.

Q. He generally does? A. Yes.

367 Q. Is he supposed to? A. No, sir.

Q. He is not supposed to contact you? A. He is supposed to straighten out all the problems himself.

Q. If he can't straighten them out he is not supposed to contact you? A. Yes, sir, if he can't straighten them out he generally does.

\* \* \* \* \*

369 RICHARD F. HARRISON

a witness called by and on behalf of the Respondent after being duly sworn was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. GOPMAN:

Q. State your full name and address for the record please.

370 A. Richard F. Harrison, 9350 Southwest 37th Street.

Q. By whom are you employed, Mr. Harrison? A. Kammer-Wood.

Q. How long have you been employed by Kammer-Wood? A. About 10 or 11 months.

Q. In what capacity are you employed by them? A. As an electrician.

Q. Are you a foreman? A. I was on the Pan American Hospital job.

Q. But you are not a foreman now? A. No.

Q. You lost that then? A. Yes.

\* \* \* \* \*

371 Q. Now who appoints you as foreman, Mr. Harrison; who makes you the foreman? A. Well, whatever contractor I am working for.

Q. Does the union have any control over your performance of your duty as a foreman? A. No.

Q. Who controls that? A. Well, whatever contractor I am working for at that time, I take my orders from him.

Q. What are your responsibilities to the contractor as a foreman?  
A. Well, to lay out work, interpret the prints and coordinate the job with the other trades and the general contractor.

Q. Do you tell the men what type of work to do or do you direct them? A. That's right.

Q. Can you fire men, Mr. Harrison, as a foreman? A. Oh, yes.

Q. Now do you have any responsibility to the union as a foreman?

A. Well, only in the fact to see that the men do their work in a workman-like manner, to put out good work according to the code and all like that.

Q. Do you have any other responsibility to the union? A. No.

372 Q. You are not responsible to them? A. No, sir.

Q. Can they tell you what to do? Can the union business agents or officials tell you what to do with respect to the men? A. No.

Q. When you are on a job, by the way, you are a member of Local 349? A. Yes.

Q. How long have you been such a member? A. Oh, I think it's about 14 years.

\* \* \* \* \*

374 Q. Now, directing your attention to the Pan American job again did any business agent or prior to the time that the Dade Sound people came on the job, did any business agent or did any officer of the labor union of the Respondent, of local 349, ever give you any directions with respect to Dade Sound or with respect to the wiring work that they were going to do? A. No, sir.

Q. Who was the first union official or business agent that you spoke to with respect to Dade Sound and with respect to the work stoppage that occurred? A. Well, the first time we walked off the job there was about 3 or 4 of us who went down to the union hall and went in and Gene Albury is one of the assistants and we told him that we had left the job and about the only thing he had to say about it was to advise us to go back to work.

Q. He told you to go back to work? A. Yes.

Q. Did you go back to work the next day? A. I believe we did, yes, sir.

Q. Now was there a steward on that job, Mr. Harrison? A. No, sir.

Q. Was John Tailor, did he have any authority from the union that you know of? A. No, sir.

\* \* \* \* \*

376 Q. Now, what happened when the Dade Sound people or rather when Mr. Statcavage came to the job on the day that the first walk-off occurred? A. Well, the first thing that I knew about it Bill Stack and Tim Sullivan came up to me --

Q. Stack or Statcavage? You knew him as Stack? A. That is the name card he has.

Q. He gives out a card with the name Bill Stack on it? A. Yes, sir. But they both walked up to me that day and I didn't know at that time that the men were pulling wire and he said, "Well, I have already got men on it." I said, "Oh, who have you got?" He said, "I've got some men from Dade Sound." And that was the first that I knew about it.

Q. All right. Did anything happen while you were talking to them?

377 A. Yes. Tailor came up there and told me that there were men down there working on the wire, pulling the wire.

Q. Did he say anything to you about not working with these men?

A. No, I don't think so.

Q. You don't recall of him saying that? A. No.

Q. He just told you that there were men down there pulling wire?

A. Yes. He told me they were down there.

Q. Did he tell you that he had checked their cards? A. I don't think so.

Q. Did he say that they were CWA men? A. No, I don't think that he did.

Q. Well, what happened then? A. Well, there was a general conversation between Bill Stack and Sullivan and myself and, of course, I was disappointed in the fact that we didn't get the job because it was a good piece of work. But Sullivan wanted to know if we were going to have any trouble about it and I told him I didn't know. And he suggested that I call Smitty Callahan and see if we could find out if we were going to have any problems over it and see if they were going to be able to



keep on working. And he and Mr. Stack asked me if I would call Callahan  
378 so I went in the office and called the local and I couldn't get a hold  
of Smitty and I called two or three times that afternoon but Mr. Stack  
and Mr. Sullivan both were very anxious for me to call the hall.

MR. JEFFERS: I move to strike the portion that he described  
both Stack and Sullivan as being anxious.

MR. DONOVAN: All right, sustained.

BY MR. GOPMAN:

Q. But they asked you to call many times? A. About 3 or 4  
times in the course of the afternoon.

Q. Now did you ever go down and check the cards of the employees  
who were pulling the wire? A. I went down and asked one of the fellows  
if I could look at his card because there was a conversation between  
Stack and myself as to whether they were affiliated with the AFL-CIO  
because up to that time I didn't know anything about CWA and that was  
part of our conversation and so I went down and looked at one of the  
boy's cards.

Q. What was your purpose in doing that? A. Well, let me see. In  
our conversation Stack said there should not be any reason why you fellows  
can't work with them because they are AFL-CIO just like yourselves and  
it was my impression that any union that was AFL-CIO would have it  
stamped on the card but that card didn't have it on it and it was just as  
much curiosity as anything else.

Q. What happened after that? After you went down and checked  
379 the card, what happened? A. Well, we continued our conversation  
and then it got around lunch time and we went to lunch. And then the  
sound men didn't come back that afternoon and I figured maybe they were  
pulled off the job or something, I don't know. But I think around 2 o'clock  
they did come back.

Q. Let me ask you this. Did you help Mr. MacMillan find some  
boxes? A. Yes. We went over to the prints and there were some locations  
that had been changed by Bill Stack and he hadn't told MacMillan about it,  
so I went over quite a bit of the stuff with him because the prints didn't  
conform to the way they wanted the job put in.

Q. Now you continued to work with these people? A. Yes, oh yes.

Q. At that time? A. Yes.

Q. What happened in the afternoon after the sound men came back?

A. Well, there was a general unrest amongst the men and I figured what was coming up and one of the men came up to me and told me he was very unhappy about the situation and that he was leaving and I told him okay, so he put his tools away and left.

Q. Who was that? A. That was Larry Nayman.

380 Q. What is he on the job? A. He was one of the electricians.

Q. Is he a journeyman? A. Yes, sir.

Q. Is he a steward? A. No, sir. And then from then on until all of the men left it was just a course of one after another coming to me and telling me that they were leaving and giving various reasons.

Q. Did you call the local during this period of time? A. I attempted one time to call the hall and see if I could get a hold of Smitty.

Q. Did you quit work yourself, Mr. Harrison? A. Yes, I quit at about 2:30 after the men had gone. I put all the tools away and locked the tools and called my shop and told them the men had left.

Q. Who did you speak to at the shop? A. I think I talked to one of the girls in the office and told her to tell Bill Brush because he was superintendent for the shop.

Q. Did you tell the men to leave? A. Oh, no.

381 Q. Did the union or any official or business agent in any constitution or by-law or any document ever give you power or authority or the direction to tell the men to quit? A. No. I mean there would be no way I could have told them. There would be no purpose. My object was to keep the job going and to get it finished.

Q. You came back to work the next day after speaking to Mr. Albury then? A. Yes, sir.

Q. Okay. What happened after that? A. Well, it was a touch and go situation. I think I walked off the job again about a week later, I don't remember now, to tell you the truth.

Q. After that walk-off did you go back to the union hall? A. No.

\* \* \* \*

384

CROSS EXAMINATION

\* \* \* \*

BY MR. JEFFERS:

Q. Will you give me the name please of the union official you talked to, you first spoke to, right after the first walk off on the Pan  
385 American job? A. Gene Albury.

Q. Gene Albury? A. Yes.

Q. And did you talk to Mr. Albury on the same day as this walk off? A. No, sir.

Q. The next day? A. Yes, it was the following day when we stopped down at the hall, when we had left the job.

Q. You left the job at about 2:30? A. Yes.

Q. How many men did you have on the job that day? A. About eight.

Q. Do you recall when the first man left? A. I think it was somewhere there between 2 and 2:30, roughly, because I called the shop and turned the time in, and that is the only way I can remember.

Q. Part of your job is to turn in the time? A. Yes.

Q. Did you turn in the same time for all the men on that day?  
A. Yes, sir.

Q. They all left at about the same time? A. I don't remember to break the time down to anything less than a half hour, in other words, I don't turn in two hours and fifteen minutes.

386 Q. They all left within a half hour? A. Yes, and I gave all the men the same time that I gave to myself.

Q. Mr. Naiman, did he tell you why he was walking off? A. Yes, sir.

Q. What reason did he give? A. The best I could remember now is that his reasoning was that we had men in our own Local that were out of work, and that he felt should be doing that work out there.

Q. And what did you tell Mr. Naiman? A. I told him I felt the same way.

Q. Did you tell Mr. Naiman to stay on the job? A. I didn't tell him what to do, that was his own choice.

Q. Were you his foreman? A. Yes, sir.

Q. Did you have a responsibility to your employer to see if you could keep the men on the job? A. Yes, sir, the best I can.

Q. Did you tell any of the men to stay on the job? A. I told them that I wanted to go ahead and get the job done. I knew the men's feelings, because I knew how they felt about the darned thing.

Q. How did you know how the men felt? A. I worked with these men before there and they are all of strong character and they are set  
387 in their ways.

Q. You mean, they are strong union men? A. They have strong convictions, yes, sir.

Q. How many times did you yourself walk off the job on the Pan American Building? A. I believe it was four times altogether.

Q. And what was your reason on each occasion? A. The same reason I left the first time. We had men right in our shop that were very good sound men and I would have very much liked to have seen them do the work than or rather than those boys.

\* \* \* \* \*

388 Q. Now, can you recall after the first walk off, when you returned to the Pan American job? A. Let's see. We left in the middle of the week. I talked to Mr. Dorsey from the N.L.R.B. on Friday afternoon at Biscayne 21 and the following Monday morning we went back to the job.

Q. Did anybody tell you that Dade Sound was going to be on the job, at that time? A. No, we went over to the job and they didn't show up so we went over to the job and went to work.

Q. And you continued to work when they didn't show up? A. Yes.

Q. What time of the day was it when you first tried to call Smitty Callahan, I am referring to the time now of the first walk off? A. I would



say it was in the neighborhood of 11 o'clock.

Q. And how long had Dade Sound been on the job, at that time? A. Oh, about half, three-quarters of an hour, I guess.

Q. When was the next time you tried to call Smitty Callahan? A. I didn't try to call him any more.

Q. You just tried to call him once? A. Yes.

\* \* \* \* \*

390 Q. Well, I'll withdraw the question. Do you have any personal objection to working with Mr. MacMillan? A. No.

\* \* \* \* \*

#### GENE ALBURY

a witness called by and on behalf of the Respondent, after being duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

#### BY MR. GOPMAN:

Q. Mr. Albury, please state your full name and address for the record, please? A. Gene Albury, 830 E. 37th Street, Hialeah.

Q. By whom are you employed, sir? A. Electrical Union 349.

391 Q. In what capacity? A. Assistant Business Agent.

Q. How long have you been an assistant business agent? A. Since June 26.

Q. How long have you been a member of the local union? A. Since 1948.

\* \* \* \* \*

Q. Now, Mr. Albury, do you recall of any conversations or discussions that you had with one Bob McLain in reference to a job he was working on for a bowling alley job? A. Yes, sir.

Q. Do you recall approximately when that conversation took place? A. No, sir, but it was sometime there at the end of the year, I think it was.

Q. All right, who is Mr. McLain incidentally? A. Bob McLain was working for Burns and Jaeger, at the time.

Q. And did he have some capacity with the union? A. No, sir, he was a steward on the job.

Q. That is what I meant, he was the union steward on that job?

392 A. That's right.

Q. Now, what was your first knowledge of any incident that took place on that job, sir? A. Well, one morning at about 10 minutes after 8, he called me and he wanted to know if I had another job that I could place him on, and I asked him what the problem was, and he said, that there were some non-union men working out there on the job and he didn't wish to work on there any more and that he wanted to quit and get another job.

And I told him the best thing for him to do was to go on to that job and if he didn't that I'd have to replace him with another man.

Q. What did he do? A. He went out to the job.

Q. Did you know of any work stoppages on that job up until that time? A. No.

Q. Did you know whether the rest of the men had stopped working on that job? A. No.

Q. Did you do anything further in reference to that job? A. No.

Q. Why not? A. Well, because we have to man that job.

393 Q. Now, does the union have any policy or rule or regulation either in its by-laws or constitution or one that was adopted and publicized among the entire membership with reference to working on jobs with non-union people? A. No.

Q. Does the union have any such policy with reference to working on jobs when there is no steward on that job? A. No.

Q. What are the men supposed to do when there is no steward on the job, if anything? A. They are supposed to continue on working.

Q. What are the circumstances under which they are supposed to stop working? A. If I were to go out there on the job and there to tell them to get off.

Q. Does the union have any policy that you know of or that you have

heard of with respect to working or not working with CWA people or Dade Sound and Controls? A. No.

\* \* \* \* \*

394 Q. Now, do you recall of any conversation or of any meeting with Mr. Harrison, at any time, this year, early this year, with reference to the Pan American job? A. Yes, sir, I told him just like I told Bob McLain to get back out there on the job.

Q. And to go to work? A. Yes, sir.

Q. When did you tell him that? A. One day he came into the Local.

Q. And what did he tell you? A. He told me that there was some non-union men out there on that job and he'd like to have another job.

Q. And what did you tell him? A. Just like I told Bob McLain that if he left that job I'd have to replace him with another man and to get out there and go to work.

\* \* \* \* \*

#### CROSS EXAMINATION

\* \* \* \* \*

395 BY MR. JEFFERS:

Q. Is there anything that you know of in the by-laws that sets out any duties of the foreman on the job? A. No, sir.

Q. Are you familiar with Article VIII/IX of the By-Laws, entitled, "Stewards" Section 4, duties of the stewards shall be, subject Paragraph 6, a steward with the assistance of the foreman should notify the Local Union office, or shall see that the local union office is notified in any case where a member is injured and that the jurisdiction or the injured is so forth and so on, now, did you ever hear that? A. Well, yes, sir.

Q. Same Article Section 5, in the case of any trouble on the job a shop steward shall immediately notify the business manager, did you ever hear of that? A. Let me classify what you call as trouble, because

396 a man wants to quit a job, it's trouble.

Q. A work stoppage, is not trouble? A. Not as far as I am concerned.

Q. I see. Does your union have any men who do so called sound work installations and communication systems work and that type of thing?

A. Yes, sir.

Q. You do have men who are qualified to do that? A. Yes.

Q. Does your local ever refer men to do that type of work to various employers? A. Yes, sir.

Q. Do you consider that part of your Local's jurisdiction? A. Yes, sir.

Q. Are you familiar with Section 4 of Article IX of the By-Laws which says, duties of stewards shall be sub-paragraph 3, to report any encroachment upon the jurisdiction of the local union? A. Yes, sir.

\* \* \* \* \*

398 Q. Did Harrison give you the reason for his not wanting to work on the job? A. Yes, sir.

Q. What was his reason? A. There was non-union men on the job.

Q. Did you report this incident to anyone? A. No, sir.

\* \* \* \* \*

399 Q. Were you aware that the Dade Sound and Controls people filed a charge with the National Labor Relations Board on February 7, 1963, with respect to the Pan American job? A. The first I knew about it was when the marshal came down to the Local there and served the papers.

Q. Do you recall when that was? A. No, sir, I don't, but we can look at the papers and find what the date was.

Q. This was the U.S. Marshal? A. I think so.

\* \* \* \* \*

400 Q. (By Mr. Jeffers) Do you know if under your by-laws the steward has an obligation to try to straighten out any difficulties that occur on a job? A. Yes, sir.

Q. Did you question Harrison as to the nature of the work that these non-union men were doing? A. No, sir.

401 Q. Did you ask him if they were employees of Kammer-Wood? A. No, sir.

Q. Did you ask him anything at all about the circumstances of the situation? A. No, sir.

\* \* \* \* \*



404

JOHN R. TAYLOR

a witness called by and on behalf of the Respondent, after being duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. GOPMAN:

Q. State your name and address for the record, Mr. Taylor?

A. John R. Taylor, 6859 S.W. 13 Terrace. (Taylor)\*

\* \* \* \* \*

405

Q. What is your classification? A. Now, a journeyman.

Q. When did you become a journeyman? A. January 1, 1963.

Q. What job were you on when you turned journeyman? A. Pan American Hospital.

Q. Were you ever a steward on that job, Mr. Taylor? A. No, sir.

Q. How did the union go about appointing stewards? A. I don't know the exact rules they follow and everything. I do know from hearing this that they appoint a responsible person, and a person that has a little experience.

Q. You know that you were not appointed as steward on that job?

A. Yes, sir.

Q. Who was your job foreman on that job, Mr. Taylor? A. Dick Harrison.

Q. Was he the steward on that job? A. No, sir.

Q. Since you were on the job, can you tell me what was the reason that there was no steward on that job? A. No, sir, I can't tell you the reason. I know I have worked on plenty of jobs where there wasn't a steward or a smaller type job with 10 or maybe 12 men.

406

Q. That was a smaller type job? A. Yes, sir.

Q. How many people were working at the time that you - well, about February 4, about how many people were working? A. 7, if I can recall.

Q. Mr. Taylor, were you ever told either before you became a journeyman or after you became a journeyman, that the union's members did not work with non-union people? A. No, sir.

Q. Were you ever told by any responsible person in the union, any officer or business agent not to work with the employees of Dade Sound?

A. No, sir.

Q. When, if ever, were you told not to work with employees of CWA? A. I never was.

\* \* \* \* \*

407 Q. Now, directing your attention to February 4 - by the way, you were sitting here all day yesterday and you heard the testimony? A. Yes, sir.

Q. Now, on that job there was some testimony that you went down and collected some cards? A. Yes, sir.

Q. Of people who were doing some wire pulling work? A. Yes, sir.

Q. What attracted your attention to them? A. I was walking down the hall and saw them pulling cable, that's all.

Q. Why did you go over and check their cards? A. I didn't recognize them; I'd never seen them before.

Q. You didn't recognize them as what? A. As anybody I had ever seen, I had never seen the people before. I mean, he is pulling cable and everything and I had never seen him before and so I wanted to know who he was.

Q. You mean you didn't recognize them as members of 349?

408 A. I didn't recognize them as members of 349, as electricians or as anything else.

Q. Now, did you have any responsibility as an ordinary journeyman to go and check those cards? A. Yes, I think so.

Q. Even though you weren't a steward? A. Yes, sir.

TRIAL EXAMINER: Why did you think you had that responsibility, Mr. Tailor?

THE WITNESS: I had a responsibility to myself and to the members of my organization to find out who these men were, whether they were working for my company or just who they were.

BY MR. GOPMAN:

Q. Is there some rule that requires you to check them? A. No, sir, it's a common thing that is done all over the United States.

Q. When you went down and checked the cards, what did you find, Mr. Taylor? A. I found that these men were members of CWA.

Q. Had your union, to your knowledge, taken any position with respect to your working with members of CWA? A. No, sir.

Q. What did you do after that, Mr. Taylor? A. After I checked the card, I gave him his card back and I walked through and saw Dick Harrison in the lobby with Bill Stack and Tim Sullivan. I walked up to Dick and I said, there is men in the back pulling cable on the job.

409 Q. What else did you say then? A. I didn't say anything. He told me okay, and I turned around and left and went back to work.

\* \* \* \*

Q. Now, did you go to lunch afterwards? A. Yes, sir.

Q. What happened during lunch - and, well, there is some testimony that you drove away in a car or something like that? A. Yes, sir, we went down to a restaurant and ate lunch.

Q. With any of your fellow employees? A. Yes, sir.

Q. Did you come back from lunch and go to work? A. Yes, sir.

410 Q. What occurred then? A. Well, I went back to work and I worked up to about 2:00; 2:15, when I noticed these sound men were back on the job again and I went and told Dick Harrison that I wasn't going to work there any more, that I was going home.

Q. Did you? A. Sir?

Q. Did you go home? A. Yes, sir.

\* \* \* \*

# CROSS EXAMINATION

BY MR. JEFFERS:

\* \* \* \*

411 Q. Did you work the following day? In other words, you left the job around 2:00 or 2:15, then, did you work the next day? A. The first time?

Q. The first time; yes, sir. A. No, sir, I don't believe that we did. I don't remember, it's been a long time.

Q. Take your time and try to remember? A. No, sir, we didn't work the next day.

Q. You didn't work the next day? A. No.

Q. Well, can you remember how long it was before you returned to the job? A. It was the following Monday, if I am not mistaken, I am not really sure.

\* \* \* \* \*

412 Q. Did you report to the hall that you had walked off the job?

A. I went in with Dick Harrison the next day to the hall, yes.

Q. Who did you talk to? A. Gene Albury.

Q. Both of you talked to him, at the same time? A. I didn't talk, I just stood there.

Q. Exactly where was it that you talked with Albury? A. In his office.

Q. This was at the union hall? A. That's right.

Q. Not at the job? A. No, sir.

\* \* \* \* \*

413 Q. Can you remember what Mr. Albury said? A. Yes, I can.

Q. What did he say? A. He told us to go back to work.

Q. And you went back to work? A. Yes.

Q. Did you go back to work? A. Yes, the following Monday.

\* \* \* \* \*

414 Q. What kind of cards did these men who were pulling wires have?

You said you were checking the cards of the two men who were pulling wires, is that right? A. Yes, sir.

Q. All right, what kind of cards did they have? A. A little card.

Q. From what union? A. CWA.

\* \* \* \* \*

415 Q. I see. Did you ask anybody before you talked to Mr. Harrison if it was all right if you left the job? A. No, I didn't.



Q. Now, is the reason that you went back to the job because Mr. Albury told you to? A. We went by the job on Monday to see if Dade Sound was still working on the job and they weren't there so we went back to work.

416 Q. When you rode by the job was that the first time that you had actually, physically been back to the job since you left? A. Yes, sir, we didn't go to the job then, we just drove by there.

Q. You went to the job and didn't see any Dade Sound men and so you went to work? A. Yes.

Q. And that was after you talked to Mr. Albury and he told you to return to the job? A. Yes, sir.

Q. Did he at any later time leave the job, or did you I should say at any later time leave that job? A. Yes, sir.

Q. All right, do you recall when that next time was? A. No, sir.

Q. Did you leave the job more than twice? A. Yes, sir.

Q. And at any of these other times did you go to Mr. Albury or to anyone else down at the hall? A. No, sir.

Q. And what was your reason for leaving the job? A. The reason that we have qualified card carrying sound men who are sitting on the beach (bench) at the time and I thought they should have the work. We had sound men in our own shop, at that time, that were qualified to do  
417 the work, and I felt that they should do the work and I felt that they should have the work.

Q. If these men had been I.B.E.W. sound men, then you would have had no reason to leave the job? A. These Dade sound men?

Q. Right. A. That's right.

Q. In other words, if they had shown you I.B.E.W. cards then you would have had no reason to leave? A. That's right.

Q. Did you ever meet Mr. MacMillan before that time? A. No, sir.

Q. Ever see either one of those men before that time? A. No, sir.

Q. Did you have any discussion during your lunch time about the sound men being on the job? A. Not that I recall.

Q. You didn't discuss it amongst yourselves? A. No, sir.

Q. Had you worked all over the United States by the way? A. No, sir.

Q. Did you check anybody else's card on that job? A. No, sir.

Q. Do you know if there was anybody on the job besides the employees of Kammer-Wood pulling the cable or pulling the wire? A. I  
418 didn't notice that.

Q. Did you know if there was anybody else on the Pan American Hospital job other than the employees of Kammer-Wood who pulled the wire, pulled the cable? A. I don't know.

Q. You don't know, or there wasn't? A. No, there wasn't.

Q. Never saw anybody else on the job? A. No, sir, besides this Dade Sound.

Q. Do you know if R.C.A. did any installation work on that job?  
A. Yes, sir, they did.

Q. Did you ever check any of their cards? A. [No], sir.

Q. They pulled wire and actual cable also on that job? A. Yes,  
sir.

\* \* \* \* \*

419 BY THE TRIAL EXAMINER:

\* \* \* \* \*

Q. Why did you become interested in checking the cards when you became an active electrician? A. My dad's been an electrician for twenty-five, thirty years and he has always been union, he was never interested enough to explain anything to me before I got out of school  
420 because you know and before I became involved in this, I had discussions with him and everything and learned a little bit more about union business and everything which I didn't find out when I was going to High School.

Q. What I am actually asking you though is what is the significance of checking the card to you, why did you do that? A. The thing about

checking the card is to find out if the man has a card or not.

Q. All right, why do you want to know if he has a card or not?

A. Because if he doesn't have a card, evidently then he is not a union man and if I have to work with another electrician I'd rather he be a union man, and since I am working out of a union organization who takes care of my family when they are sick and gives me a paid vacation and so forth, I think I'd better look out generally for them.

MR. DONOVAN: That's all I wanted to know. Is there anything else? (No reply proved forthcoming) . . . You may step down, sir.

(Witness excused)

MR. GOPMAN: Mr. Stamp, please.

Thereupon:

FRED STAMP

a witness called by and on behalf of the Respondent, after being duly sworn, was examined and testified as follows:

421

# DIRECT EXAMINATION

BY MR. GOPMAN:

Q. Mr. Stamp, state your name and address for the record, please?

A. Fred Stamp; 701 E. 44 Street, Hialeah.

Q. By whom are you employed? A. Kammer-Wood.

Q. In what capacity, sir? A. Electrician.

Q. Are you a journeyman? A. As a journeyman, yes.

Q. Now, directing your attention to the Publix Market job, do you recall being on that job? A. I was the union steward.

Q. Do you recall any conversations with respect to CWA or Dade Sound or doing the sound work in respect to that job? A. Yes, I asked some CWA men for their cards.

Q. I am just asking you now, if you recall it? A. Oh, yes; I do.

Q. Do you recall approximately when this took place? A. In the early part of February.

Q. Would February 4, be the approximate date? A. Yes.

Q. Now, what was your first knowledge of this? A. CWA men being on the job?

422 Q. Yes, sir, of them having anything to do with the job? A. When I approached them and asked them for their cards.

Q. Where did you see them, were they working at the time?

A. They were working and starting to pull cable in the little office.

Q. And you walked over to them? A. That's right.

Q. Who did you speak to? A. There were three of them there, Mr. Stack, MacMillan and Oliveira I guess.

Q. This gentleman over here? (Indicating Oliveira) A. Yes, sir, that is right.

Q. Go ahead. A. I produced my card and asked them for theirs.

Q. And did they show you their cards? A. Yes, sir, they did.

Q. Who showed you cards? A. MacMillan and Oliveira.

Q. Where exactly on the job site was this? A. In the produce section, in the little office at the front of the produce section of the warehouse.

Q. Were they already actually engaged in the performance of work?

A. They had wire and I guess they were pulling it, I'm not sure. I saw the wire and what made me question the card -

Q. Well, what did you do after that or what was the full conversation had between you and them? A. At that time, it was that I showed

423 them my card and asked them for theirs and they said they were CWA men, union men, and they showed me the CWA cards.

Q. Did you say anything to them? A. No.

Q. What happened then? A. I left.

Q. Where did you go? A. I went to Mr. Goldsmith, Goldsmith, the superintendent for Publix Markets.

Q. And what did you say to him, if anything? A. I told him that there were sound men, CWA men, doing the sound work on the job, and that we were led to believe that we would get the work, but apparently they were going to do it, and I said, that I would not work with them.

Q. Did you between speaking to the CWA men and the time you went to Mr. Goldsmith, did you call the union hall? A. I did not.

Q. Did you speak to anybody? A. No, sir.



Q. Now, prior to this time, had the union or any business agent or any official of the union given you any instructions with reference to working on the job with CWA men? A. They did not.

424 Q. Did the union have any policy, in their by-laws, their constitution or any publicized statement which told you or had given you instructions about this? A. No.

Q. What did Mr. Goldsmith do about it? A. He said that he would find Mr. Stack and talk it over with him.

Q. Did Mr. Goldsmith ask you why you wouldn't work with these men? A. No, but I told him why.

Q. That was the reason you had just given? A. That's right.

Q. All right, now, what happened after that? By the way, Mr. Goldsmith has been identified as being the job [superintendent], I believe? A. The superintendent for Publix Markets, yes.

Q. For Publix Markets? A. Yes, the construction superintendent.

Q. All right, what happened after that? A. Mr. Goldsmith, when I walked up to him was in conversation with Mr. Browning about some work to be done on the job, when I approached, and I told him that as far as I was concerned the CWA men were on the job and I wasn't about to work with them. Well then, he said, we will have to find Mr. Stack and so we began searching the job for them and we found them at the same time they were looking for Mr. Goldsmith.

425 Q. Let me ask you this. Why did you go to see Mr. Goldsmith about this? A. Because he was the superintendent for Publix and I wanted to inform him of my reasons for leaving the job site. Because, I objected to these men being on the job.

Q. How long have you been a union member, now? A. Approximately ten years.

Q. What happened after Mr. Goldsmith said that they had to speak to Mr. Stack? A. We found Mr. Stack, Mr. MacMillan and Mr. Oliveira and we had a conversation about the CWA and the work and I just maintained that I would not work with those people.

Q. What happened, if anything, after that? A. Mr. Goldsmith said that he would have to take this to Mr. Newsom who was the plant manager, the future plant manager after the building was completed, and that he would have to make the decision on who would do the sound work and when.

Q. Now, does or did Mr. Goldsmith or Mr. Statcavage speak to Mr. Browning, at that time? A. When I was in conversation with Mr. Statcavage, and with Mr. Goldsmith, Mr. Stack turned to Mr. Browning and said, will you work with these people?

Q. And what did he say? A. He said, I will not, for personal reasons, or Mr. Stack asked him his reasons and he said that they were personal.

426 Q. Did anybody ask you for your reasons, if you had any more reasons, or did they question you any further about your reasons for not wanting to work on this job? A. They questioned the fact that I would work with the telephone people which was CWA and then why I worked with these people who were CWA which was the same thing and I said that the telephone people were a utility so to speak and that they did not come in on a building, on a private building and do the work that was in our jurisdiction.

Q. Did you call the union, at that time? A. No, sir.

Q. Did anybody call the union, at that time? A. No, sir.

Q. Now, when you heard Mr. Browning say what you said, did you feel that you had some responsibility to say anything when he said that?

A. No. Mr. Browning, they asked him out of the blue sky for his answer.

Q. Was he your supervisor? A. He was the job foreman.

Q. The job foreman? A. Yes.

Q. He was above you? A. That's right.

427 Q. Did you feel any responsibility for his actions either as an individual or as a union man? A. I did not.

Q. Did anything else happen? A. After the second conversation took place on the loading dock, we went out to the trailer to see Mr. Newsom and there was a good deal of waiting out there. Finally we got in to

see Mr. Newsom and Mr. Goldsmith explained the situation and Mr. Newsom asked me if I would work with these people and I said no, and, he said, well, how about the other electricians, and, I said, I have no idea what they will do.

Q. Now, is there any union rule or regulation basically about the men working on the job when the steward is not there? A. None.

Q. Is there any requirement that the men quit their job specifically when the steward is not there or has left the job? A. No.

Q. How are you appointed steward, Mr. Stamp? A. I was appointed by a letter and I received a card designating me as the job steward through the mails.

Q. What are your responsibilities as a job steward? A. To enforce working agreements.

Q. Do you deal with the job foreman in doing that? A. Several times.

Q. That is, the electrical job foreman? A. That's right.

428 Q. Do you have discussion or arguments or controversies with him? A. Very definitely so.

Q. Who does he represent there? A. He represents the employer.

Q. As such, is he somewhat against you and you against him as representing the union? A. In a good deal of the time he is, yes.

\* \* \* \* \*

#### CROSS EXAMINATION

BY MR. JEFFERS:

\* \* \* \* \*

429 Q. Have you ever worked as a foreman on any other job? A. Yes, I have.

Q. You worked both as a steward and as a foreman? A. I have, but not at the same time.

Q. Not at the same time, but at various times you have been a steward and at various times a foreman, is that right? A. That's right.

\* \* \* \* \*

430 Q. Who was Mr. Browning working for? A. He was the foreman for Kammer-Wood.

431 Q. Who told you that you were getting the sound work on that job? A. Mr. Browning. He had discussed this with Mr. Stack previously when they wanted the conduits run in the building, for the refrigeration units, they wanted outlets run into the rooms and he wanted to place them to make sure they were in before the rooms were completed and we were following his instructions.

Q. Did you, yourself, have any conversations with Mr. Statcavage about doing the sound work? A. No, Mr. Browning had all the conversations being the foreman. Mr. Browning had told me that Kammer-Wood had the sound on it and that I would probably work along with the sound men in doing the work.

Q. Have you ever worked on any job before this time when sound work was done by anyone else but by the I.B.E.W.? A. None.

Q. You have never done that? A. No.

Q. Then you had never walked off a job before for that reason? A. No.

Q. You did not check with the hall before you said you weren't going to work? A. No, I did not.

432 Q. Who did the sound work, by the way, on the job? A. Dick Williams Sound, Inc. or something like that.

Q. Dick Williams Electrical? A. I guess that's right.

Q. Did he use I.B.E.W. men? A. He certainly did.

Q. Who asked you what the other electricians would do? A. I think it was Mr. Newsom.

Q. Mr. Newsom? A. Yes.

Q. And your reply was what? A. That I didn't know what they would do.

\* \* \* \* \*

433 Q. About how many electricians did you have on the job, at the time? A. At that time, there was approximately 22 journeymen and 8 apprentices.



Q. Now, you had a conversation with Mr. Goldsmith about leaving the job, is that true? A. That's right.

Q. And in this conversation was there anything said about the other men leaving the job? A. No.

Q. Didn't Mr. Goldsmith say something to the effect that they could all go fishing and you said, that's right? A. That conversation took place in the trailer, when Mr. Newsom asked me what would the other electricians do and I said I do not know what they would do, I had no previous conversation with any electricians on the job, it was, at this time, in the trailer, when I made that statement. Mr. Goldsmith who was or had apparently been on other construction jobs said that if a man goes or if that man goes probably all the other electricians will go, they will get sick, they will start dropping like flies and then leave.

Mr. Newsom said, is that so? And, I said, that's right as far as I know it probably is, but I don't know just exactly what they will do.

434 MR. DONOVAN: Mr. Goldsmith, did he know that you were the steward, Mr. Stamp?

THE WITNESS: At the court injunction they said that he identified me as the steward, but I do not believe that he did know that I was the steward, because I had no previous dealings with him in the capacity of a steward, at that time, and I did not identify myself to him as a steward, and the only person I identified myself as a steward to was Mr. Stack when he asked me whether I was the steward on the job.

MR. DONOVAN: All right.

BY MR. JEFFERS

Q. Well, did Mr. Goldsmith know or recognize you when you came up to him? A. I had been working on the job approximately a month, yes, he knew me.

Q. And how long had Mr. Goldsmith, as far as you know, been on the job all during that period? A. He was there from the start of construction.

- \* \* \* \* \*

435 Q. Tell us how many employees did Dick Williams have on the job,  
if you know? A. Two.

\* \* \* \* \*

436 MR. STAMP: They had their cards because I checked them out,  
but I don't remember their names offhand.

\* \* \* \* \*

438 ARTHUR LASCHOWER

a witness called by and on behalf of the Respondent, after being duly  
sworn, was examined and testified as follows:

# DIRECT EXAMINATION

BY MR. GOPMAN:

Q. Please state your name and address for the record, Mr.  
Laschower? A. Arthur Laschower, 18405 N.W. 42 Place.

Q. By whom are you employed, Mr. Laschower? A. Kammer-  
Wood.

Q. How long have you been so employed? A. About 3-1/2 years.

Q. What is your capacity with them? A. Foreman.

\* \* \* \* \*

439 Q. I am referring now to the Lincoln Life job, were you the stew-  
ard, sir? A. No.

Q. Did that job ever have a steward on it? A. No.

Q. Did you ever assume the duties of the steward? A. On that  
job?

Q. Yes. A. No.

Q. Now, as a job foreman, did you ever assume the duties of a  
steward? A. No.

Q. Who are you responsible to as a job foreman? A. Kammer-  
Wood.

Q. Do you have any responsibility to the union as a job foreman?  
A. No.

\* \* \* \* \*

443 Q. Now, at any time, did the union ever tell you not to work with  
 444 Dade Sound people? A. No, I never heard of Dade Sound until  
 then.

Q. That was the first time you heard of them? A. That's right.

Q. Had Mr. Herold mentioned them to you before? A. I don't  
 think he mentioned the name.

Q. Had Mr. Mahieu mentioned them to you before? A. I never  
 met Mr. Mahieu until that time.

Q. Is there any policy in the union that requires you not to work  
 with non-union, I.B.E.W. people? A. None that I know of.

\* \* \* \* \*

451 ROBERT LEE McLAIN

a witness called by and on behalf of the Respondent, after being duly  
 sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

452 BY MR. GOPMAN:

Q. State your name and address for the record, please, Mr. Mc-  
 Lain? A. Robert Lee McLain, 9355 Southwest 80th Street, Miami 43,  
 Florida.

Q. By whom are you employed? A. I am not employed at the  
 very present.

Q. Directing your attention to July 27, 1962 up through a period  
 of September 1962 were you employed by Burns and Jaeger? A. I was.

Q. Where? A. At the bowling alley at the end of Flagler Street,  
 I think it's called the Village Green Bowling Alley.

Q. Were you the union steward on that job? A. I was.

Q. How many employees did you have on that job? A. They had  
 about 30 or 31.

Q. How were you appointed steward? A. By the union.

Q. In which manner? A. Well, when I went in to get a job they  
 asked me if I would take the steward's job on this particular job and I  
 said yes.

Q. Did they give you a card? A. They gave me a card and sent me a letter and sent a letter to the contractor by mail. When the job was over I gave them the card back.

453 Q. Now, while you were working on that job or on or about July 27th did you get some knowledge of CWA men coming to that job or other non-union people coming to the job to do some electrical work? A. No. I will tell you how it was. Well, yes, I first went out there and Gene Jaeger and Harry Burns were there and that was the first time I had worked for them. They came out there and I told them, I am a true and loyal employee and that I will work for them wholeheartedly but that I won't work for non-union people who are outside the AFL-CIO.

And they said we won't subject you to that at any time. And they said to me how about the sound, we've got the sound. And I said, well, contact the hall or do you have sound men in your employ? And they said they had and they sent us over one. I think in the meantime I asked one of the others to send me one and when the sound work came up I'd have several sound men to do the job plus the fact that I could do it myself too.

Q. When were you informed or when did you get any knowledge that any non-union men would be on that job to do any sound work?

A. I didn't get any knowledge of it until one day at about 11:30 or something like that when Al Logan came over and I was stringing some temporary wire down in the booth where they shoot pool and it was real hot in  
454 there and he says, I want you to come over and meet somebody.

And so I went over there and he said that this man is going to put in the sound and I said, well, I thought we had the sound, and he said, no, they are going to give it to this Coker Sound outfit.

So I said, well, are they union and this guy by this time this MacMillan I recognized him from running into him once before, he says, MacMillan says to me, do you object to working with me? And I said, well, you will find out. And I just turned around and went back and started stringing some more temporary wire and I guess I strung temporary



wire up there for 20 or 30 more minutes but I kept my eye on the man because there was a lot of people in and out of this particular job.

So then the first thing I know he is back there working and has his ruler out doing something. So my position is that I don't work outside the AFL-CIO. So I picked up my tools and went on home.

Q. You knew MacMillan? A. Yes, I did, from another job on this library job. And one day I was working over there and I was neither the foreman or the steward, I was just working for Miller Electric and I noticed this guy working in the closet and I said, hi buddy, I try to be friendly with everybody because the more friendly you are the more better you get your work done sometimes, and I said, what are you doing  
455 with the wires, and he says, I am a sound man. Are you from our local? I don't remember you because I have been in the local since 1950 and I know a number of men and he says to me, No, I am not, I am not in your local.

So I smoked cigarettes and I said to him, let's go outside and smoke and talk this thing over. And he says, I am in the CWA or something like that, but we get to talking and I says, do you pay dues, and he said, no I don't pay dues. I said, well, here is my ticket. I had a Metro competence ticket also and I showed him that, that I am competent to do work in this town and area and his was a blue card and all beaten up and I could hardly read it.

And I said, it doesn't have a number on it and I said to him, what night is your meeting? I also said, I will come down and see what kind of a local you have. I am interested in bettering myself. And he said we don't have any meetings.

So I said how can you say you are a union man? And the guy didn't really realize what it was to be a good union man because I know that the union gives me good benefits to protect my family with insurance and everything else I get from them. And I explained to him what we get from our union and I said, Buddy boy, you are up the wrong tree. And I picked up the rest of my tools and went back home and I didn't go back there on that particular day. \* \* \*

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456 Q. You knew him on a previous job? A. Yes.

\* \* \* \* \*

Q. When you saw him doing this work, you saw him with the ruler you said and when you were watching him? A. Well, as I told you, and I will tell you that anybody I am going to work with I work in accord with and you attorneys work together and you belong to the same Bar Association and our electricians belong to the same electrical association in our union and that is the way it was with us. And this guy didn't belong to it. So I got up my tools and left. I can't tell the other boys not to work and this is America and I understand if I pushed the guy a little bit he could sue me and it would be best if I don't say nothing and I get my can off the job and then I will be safe and sound. And I went back home then and I took the phone off the hook and cooled off, that is just what I did.

457 Q. Did you call the union between the time that you spoke to him or that you spoke to Mr. Logan and those people that were with him?

A. No. I was a little bit hot, see, because Burns and Jaeger had promised me more or less in a gentleman's agreement that we had the sound and we had the sound men already on the job going to do it plus the fact that I can do sound work and I am a graduate of Coin of 1940 and a few other schools and I thought we had the job and I lost 5 or 6 days with this guy and so I just took the phone off the hook and went to bed.

And then the next morning I called Gene Albury because they had put me on the bottom of the list.

Q. Did you tell him what happened? A. I told him there were some non-union men out there.

Q. That is what you told him though? A. Well, on any job, plumber, carpenter or sound man or anything like that, if they don't have an AFL-CIO card I won't work with them and I have traveled all over the country.

Q. When you called and spoke to Mr. Albury did you explain the situation to him? A. No. I just told him that I was going in for a job, that I was a little sick of that thing out there because I had been promised one thing and I didn't get it.

Q. Did you tell him why you didn't want to work there? A. I don't believe that I did. I just told him there are some non-union men out there  
 458 and that I was coming in for another assignment, how about it. No, Bob, he said, I'd like to ask you to go back out there on that job.

Q. Did you go back out there? A. Yes, I went back out there. And on the way out, there is a Royal Castle restaurant along the way and somebody in there saw my French Renault going down the roadway and called to me and asked me, what are you doing, and I said, I am going back to work. And later on that day they came back on the job.

\* \* \* \* \*

Q. Did you speak to any of the other electricians on the job?  
 A. Well, no, because I stick to myself and a lot of times some of them think I am a little odd that way and I don't want to influence another man or I don't want to influence his convictions, because nobody messes with mine and I won't mess with anybody else's because those are his convictions.

Q. Does this local have any regulation about men not working when the steward isn't there? A. Not to my knowledge, no.

459 Q. Is there any disciplinary action brought against any member who continues to work after the steward leaves the job? A. No, sir, not to my knowledge and I have been there since 1950 and I never heard of anything like that.

\* \* \* \* \*

Q. Now, do you recall any other work stoppages that occurred on this job? A. Well, another day I forget the date because I am not really good at dates, the situation occurred where I went home again.

\* \* \* \* \*

460 Q. But you did leave the job again when the employees came to the job? A. Yes.

Q. Now, did the union or any business agent or any official of the union take any action or request you to leave or not to work with the CWA men? A. Never.

Q. Did they ever request you never to work with the Dade Sound men? A. I never heard of this Dade Sound until yesterday in here. MacMillan told me this was Coker Sound on this job and that is all I remember on it. I didn't know it was Dade Sound until yesterday when you were talking about it.

Q. Now, do you recall a discussion with Mr. Statcavage at that time? A. Well, after the first time I went home he came on the job and stayed there all the time, before about 9 o'clock in the morning until I always left at 4:30, but he was there and in the course of the day I might have had something to say to him, but I couldn't tell you what I said right now because it's quite a while back.

461 Q. Do you recall ever saying to him or ever discussing with him why you felt that you could not work with the CWA people or these other non-union people? A. I don't usually discuss that with anybody. I just keep it to myself and anybody that is not an AFL-CIO man I won't work with, I will tell you that right now.

MR. DONOVAN: Isn't that CWA affiliated with the AFL-CIO?

THE WITNESS: They are not and they should be and if they were they'd stop all this mess.

MR. DONOVAN: Do you know if they are?

THE WITNESS: To my recollection they are not and if they are going to be a union they should get in there and belong to it.

BY MR. GOPMAN:

Q. Now, let me ask you this. Do you recall ever saying to Mr. Statcavage or discussing with Mr. Statcavage the fact that the other men would leave the job if you left the job? A. No. The only time that I think I ever openly out there ever said anything was, and I don't remember exactly what I said that day, but there was Mr. Burns and Mr. Jaeger who said to me, Bob, I know that you are provoked because we didn't get the sound, but how about settling down here. And I said, well, I am not going to work with those people and in fact if they come on here now I

462 will walk on home. And he said, you mean if he came in here now you'd walk out? And I said, yes, if he came in here now I will go on



home like he provoked me the other day. And the other men, I don't know for sure, but as for me, I will go on home. I can't speak for these other men.

\* \* \* \* \*

Q. Did you ever tell Al Logan that you would leave the job?

A. No. I have nothing to do with Al, just to see that he treats the men right and issues the orders to the men and the men work according to our by-laws and working agreements and that is when I am the steward and that's all.

Q. Did you ever instruct him that you would leave the job?

A. Never.

463 Q. Did you ever tell him the other men would leave the job?

A. No.

Q. Did you ever threaten him with any kind of disciplinary action or reprimand? A. I have no power as a steward to ever threaten him.

Q. Did you ever do that? A. No.

\* \* \* \* \*

Q. Did you ever hear of any policy or threat that the men would be disciplined, any of them, stewards, foremen, or regular journeymen, I mean, or apprentices, if they worked with CWA or Dade Sound men?

A. No, sir.

\* \* \* \* \*

### CROSS EXAMINATION

BY MR. JEFFERS:

Q. When you leave a job who do you turn your time in to, anyone?

A. If I am the steward on the job I keep the time.

Q. You keep the time? A. You'd better believe it.

Q. Were you keeping the time on the bowling alley job? A. I was.

Q. Did you make a record of how long each employee worked on that particular day or the first time you left? A. They give it to me the next day, yes, sir.

Q. And then who turns in the time to the company? A. Mr. Logan also kept the time there but I keep the time primarily. It is my job to

keep the time at any rate to see that there will be no bickering among the men if there is any overtime or if there is any need for the hall to find out when a man was present or not present.

\* \* \* \* \*

467 Q. Now, after you left the library job did you ever go back to work there? A. Yes, sir. I think 6 days later I went back and they had their troubles ironed out.

Q. What do you mean they had their troubles ironed out? A. I understand they had the same situation there with this same fellow, MacMillan, who said his name was MacMillan, and I don't know what happened. I wasn't interested. I'd just as soon lose the time as mess with it.

Q. Did you continue to work on the library after that? A. After I went back.

Q. Did you ever work there while MacMillan worked there? A. No.

Q. Did Mr. Oliveira work there? A. I never seen the man until today or yesterday or since today, I guess it is.

\* \* \* \* \*

468 Q. Under your obligation as a union steward do you report any difficulty or trouble to the union hall? A. When the men have trouble amongst themselves I just call the hall, yes, I do.

\* \* \* \* \*

472 **EMELIO DIAZ**

a witness called by and on behalf of the Respondent, after being duly sworn, was examined and testified as follows:

# **DIRECT EXAMINATION**

**BY MR. GOPMAN:**

Q. Please state your name and address for the record, please?

A. Emelio Diaz, 3230 N.W. 171 Terrace, Opa Locka.

Q. By whom are you employed? A. R. L. O'Donovan.

Q. Are you a member of Local 349? A. Yes, sir.

Q. What is your capacity with O'Donovan? A. At the present time, I am a journeyman electrician on the service truck.

Q. Directing your attention to a period of about September 1962, were you employed by O'Donovan, at that time? A. Yes, sir.

Q. And what was your capacity with them, at that time? A. I was a foreman.

Q. Where were you working, at that time? A. Miami Laundry.

Q. Now, what made or who made you foreman? A. The contractor.

473 Q. How long had you been a foreman? A. Just at the beginning of that job, sir.

\* \* \* \* \*

Q. Now, what is your responsibility as a foreman? A. My responsibility is to see that the work is done correctly according to the Code that is in force and to see that the work is done properly and the men do a day's work for the contractor.

Q. Do you have any responsibility to the union as a foreman? A. No, sir.

Q. Does the union control your appointment as a foreman in any way? A. No, sir.

Q. Does the union control your tenure as a foreman, that is, can they get you discharged as a foreman? A. No, sir.

Q. Was there a steward on that job? A. Yes, sir.

Q. Who was the steward? A. Harry Disney.

474 Q. Now, Mr. Diaz, do you recall any conversations with reference to the sound work on that job? A. No, sir, prior to the time the men came on the job, no, sir, no conversation.

Q. Well, did you have any conversation with — well, when was the first knowledge that you had of the sound work on that job, Mr. Diaz? A. Mr. Stack come on the job, Mr. MacMillan and they asked me if I would show them the sound stuff that I had from the second floor down to the first floor which I did.

Q. Did they identify themselves to you? A. As Coker Sound.

Q. Go ahead, sir. A. I showed them the stub downs and as they were leaving Mr. Stack told me, you don't have to worry about this boy

because he's got a ticket in his pocket, and I laughed, because I thought he was pulling my leg, and I just said, fine, and that's it.

Q. What happened next in reference to the doing of this work?

A. Well, sir, I didn't see anybody else for about three or four weeks and Mr. Hoskenitch the Vice President of Miami Laundry and Mr. Stack came on to the job.

Q. You say he was the Vice-President of Miami Laundry? A. Yes, sir.

475 Q. They weren't doing the contracting work? A. No, sir, he wasn't.

Q. They were the owners of the laundry? A. Yes, sir.

Q. Then you say he came in and with who? A. Bill Stack, the man from Coker.

Q. Anybody else? A. Mr. MacMillan was outside, he was with the owner, Bill Stack and myself.

Q. What were you doing, at that time? A. I was laying out work for the men.

Q. What did Mr. Hoskenitch or Mr. Stack say to you on that occasion? A. Mr. Hoskenitch asked me if I would work with Bill Stack's men on this particular job and I told him, yes, I would, I told him that I had a responsibility to Mr. Hoskenitch to see that his job was completed to the best of my ability and I realized that I was working towards a deadline, that it wasn't up to me to hold him up in any way or fashion, and then Mr. Stack asked me if the rest of my men felt the same way, and I told him that I couldn't answer for the rest of the men, that he would have to ask them himself.

Q. Did he tell you why he was asking you this? A. No, sir, he didn't. I did tell Mr. Stack that I wanted no trouble on the job, that my men were instructed — but, no, not instructed, but no they can't work off the job or walk off the job because of the union and I told Mr. Stack this.

476 Q. Well, after he asked you that and you told him that it was up to the men themselves, did you say anything else, or do anything else?

A. There was a man working close by the area and I asked Mr. Hoskenitch if he would care to ask this gentleman and he said yes and so I took



him over and introduced him and just left him there talking to him and left because I had other work to do and well, what occurred after that with them I don't know.

Q. When next did you hear about this, or hear anything about this?

A. Well, over in another part of the building there they had wandered on through the building, and there is quite a large area and I ran into them on the other end and Mr. Hoskenitch told me that he would rather not take a chance of something like that happening, but that he would appreciate it if my shop would put a bid in for the sound work and Mr. Stack confirmed this and I told him that I would be happy to call the shop and give him a bid on the sound, which I did.

Q. Did any of your men ever stop working? A. No, sir.

\* \* \* \*

#### CROSS EXAMINATION

BY MR. JEFFERS:

\* \* \* \*

477 Q. Did your company do the sound work on that job? A. Yes, sir.

Q. Did you request any special men to do the sound work? A. Yes, sir.

Q. Do you know the men's names who actually did the sound work? A. No, sir.

Q. Do you mean they came on the job? A. They came on the job after we had been at work and had been awarded the job.

Q. Do you recall when you were awarded the job? A. Yes, sir, the same day they told us to do it.

Q. When was that? A. The date I don't know, sir.

Q. About how long did it take you to complete the job? A. Three or four days.

Q. How many sound men did you use? A. One.

\* \* \* \*

478

## HARRY DISNEY

a witness called by and on behalf of the Respondent, after being duly sworn was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. GOPMAN:

Q. State your name and address, for the record, please, Mr. Disney? A. Harry Disney, 4330 N.W. 173d Drive, Opa Locka.

Q. Are you a member of I.B.E.W. Local 349? A. Yes, sir.

Q. How long have you been a member? A. Approximately nine years.

479 Q. By whom are you employed, Mr. Disney? A. No one, at the present time.

Q. Did you work for O'Donovan back in September of 1962?  
A. I did.

Q. And did you work out on the Laundry job? A. I did.

Q. Do you recall being approached by anyone with reference to the sound work out there and working with some employees doing the sound work? A. Not before the time they came on the job.

Q. That was your first knowledge of them? A. Yes, sir.

Q. What happened on that occasion, to the best of your recollection? A. Well, as the foreman has so stated before, they had spoken to him prior to that on the same morning and they came over with Mr. Hoskenitch and asked if I would work with them and I said, no, sir.

Q. Did you ask who they were? A. Yes, sir.

Q. Now, had you spoken to Mr. MacMillan or did you ask him anything, at that time? A. Mr. MacMillan if he is the one that was to do the work, if I am not mistaken, yes, I asked him for a card.

Q. And what did he say? A. He said that he did not have an I.B.E.W. card, that he had a C.W.A. card.

480 Q. Did he say anything else to you? A. He said that some six years ago he had held an I.B.E.W. card but had torn it up, I believe he put it, since that time.

Q. Did you do anything else after telling — or did you say anything else after telling Mr. Hoskenitch that you would not work with that man?

A. No, sir, I spoke for myself that I would not work with him.

Q. Were there any union members around there, at that time?

A. No.

Q. You were alone? A. Yes, sir.

Q. Where were you working? A. In the front part of the building, if I remember correctly.

Q. Did you ever stop working on that job? A. No, sir.

Q. Did anything or anybody ever stop working on that job? A. No, sir.

\* \* \* \* \*

# CROSS EXAMINATION

BY MR. JEFFERS:

\* \* \* \* \*

481 Q. Do you know who did do the sound work on that job? A. R. L. O'Donovan did it.

Q. Your employer? A. Yes, sir.

\* \* \* \* \*

Q. Did you know what company Mr. MacMillan was from? A. I believe he told me.

482 Q. What did he tell you? A. Well, I don't know whether it was Dade Sound or this other name. (pause) . . .

MR. DONOVAN: Coker?

THE WITNESS: Coker.

BY MR. JEFFERS:

Q. He said that he had a CWA card, is that correct? A. Yes, sir.

\* \* \* \* \*

Q. Do you recall how long it was after this conversation that the sound work on the job was actually performed roughly a day or week or two weeks, a month? A. No, it was just a couple of three days, something in there.

Q. Would the sound man who did the work report to you when he came on the job? A. I checked his card; yes, sir.

Q. What was his name? A. I don't recall.

Q. Do you know who made the request for the sound man to come on the job? A. No, sir.

483 Q. About how many men were working on that job? A. I don't know, ten or twelve, probably.

Q. Wasn't a particularly large job? A. No, sir.

MR. JEFFERS: I have no further questions.

### REDIRECT EXAMINATION

BY MR. GOPMAN:

Q. Let me ask you something, were you the steward on that job?

A. Yes, sir.

Q. How had you been appointed steward? A. By form letter and also a card.

Q. Had anybody ever told you not to work with Dade Sound men or CWA men? A. No, sir.

Q. Is there any union policy or directive requiring that you not work with those men? A. No, sir.

Q. Or with non-union men? A. No, sir.

\* \* \* \* \*

486

### DAVE FINN

a witness called in Rebuttal by and on behalf of the General Counsel, after being duly sworn, was examined and testified as follows:

### REBUTTAL

BY MR. JEFFERS:

Q. State your name and address, for the record, please, sir?

A. My name is Dave Finn, and I am the Director of Local 3107, Telephone Local, CWA, Communications Workers of America, and my address is 920 South Biscayne River Drive, Miami.

Q. And is your organization affiliated with the AFL-CIO, Mr. Finn? A. Yes, it is.



Q. And your position again is what, sir? A. Director or President, and the President is also Vice-President of the organization.

Q. Now, do you know if a man by the name of MacMillan and a man by the name of Oliveira are members of your organization? A. I know both of these people and both are members of the Communications Workers.

487 Q. And are they dues paying members? A. They are dues paying members; yes, sir.

Q. Now, sir, have you ever had a conversation with a Mr. Marvin Apt concerning the performing of sound work? A. The only conversation that I have had with Mr. Marvin Apt was on the telephone.

Q. And can you recall the date that that conversation took place?  
A. No, I can't, but I would say it is about a year or so ago.

\* \* \* \* \*

Q. Will you tell us about the telephone call, sir, and what happened?  
A. Well, when this occurred, when I received this call from Mr. Apt, I had received two calls prior to that. One, was from Mr. MacMillan telling me -

\* \* \* \* \*

THE WITNESS: Well, Mr. MacMillan explained on the telephone that he was having difficulty with the I.B.E.W. because he was informed that if he remained on the job they were going to walk, so while speaking to Mr. MacMillan - and he said Mr. Apt is coming into the place of business right now the establishment where construction was going on and would I like to talk to him? I said, yes, put him on the phone.

He went away from the phone, he turned his head from the phone and he said something and he come back and said that Mr. Apt didn't wish to talk to me. After talking to Mr. MacMillan and the President of Local 3107, Mr. Mathes, called me in and informed me that Mr. Apt had called him.

\* \* \* \* \*

489 THE WITNESS: Okay. Mr. Apt came to the telephone and said that he was Mr. Apt and what was I going to do with the sound men, was I going to put them off the job? I informed Mr. Apt that I would pull no men

off those jobs that were members of CWA and they had a right to work that job there and he informed me that if I wouldn't pull the men off the job that his men would be walking, and I informed Mr. Apt that he can walk all him men all he wanted to, but CWA was staying on the job.

Q. (By Mr. Jeffers) Do you recall anything else that was said?

A. He accused CWA of raiding work away from I.B.E.W., to which I informed Mr. Apt that CWA had no intentions of raiding I.B.E.W. whatsoever. That we were a communications union and had all the intentions in the world of organizing any unorganized group of people into CWA that did communications work, and that is the main fact, sir.

\* \* \* \* \*

490

# CROSS EXAMINATION-SUR-REBUTTAL\*

BY MR. GOPMAN:

Q. Actually you didn't have to sign up any members to get this work. They belonged to your Local before they ever started doing this work, isn't that so? A. I don't know what you are talking about.

Q. Well, these people were not a company that you had to go out and organize? A. Yes, they were a company, Dade Sound and Controls.

Q. When did he join the union? A. Signed a contract December of 1961.

Q. Did he join the union before that time? A. No. They had no contract.

Q. Was he a member of the local union before that time, was he a member of the Communication Workers of America, before that time? A. No, the Communication Workers of America, when we first formed and signed a contract with a company is before they become members, we have no closed shop.

Q. How many men does he have working for him? A. Periodically three, maybe two.

Q. Just he and Oliveira do the work, isn't that right? A. The greater portion of it, that's right.

491 Q. He has nobody else working for him? A. He has had other men working for him, yes.

\* \* \* \* \*

Q. Now, you have never had any conversations with Mr. Apt since that time? A. No, never have.

Q. Do you recall in reference to what job that was? A. I think it was the University job or something. I am not definite on that.

\* \* \* \* \*

497 MR. GOPMAN: Will you stipulate that the notice that was part of General Counsel's Exhibit No. 9 was posted by the union for the required length of time of 60 days?

MR. JEFFERS: As far as I know it was, I will stipulate to that.

MR. DONOVAN: All right, we will stipulate then that this notice  
498 was properly posted on the union bulletin board in the union hall and that the union complied with the requirements in the decision.

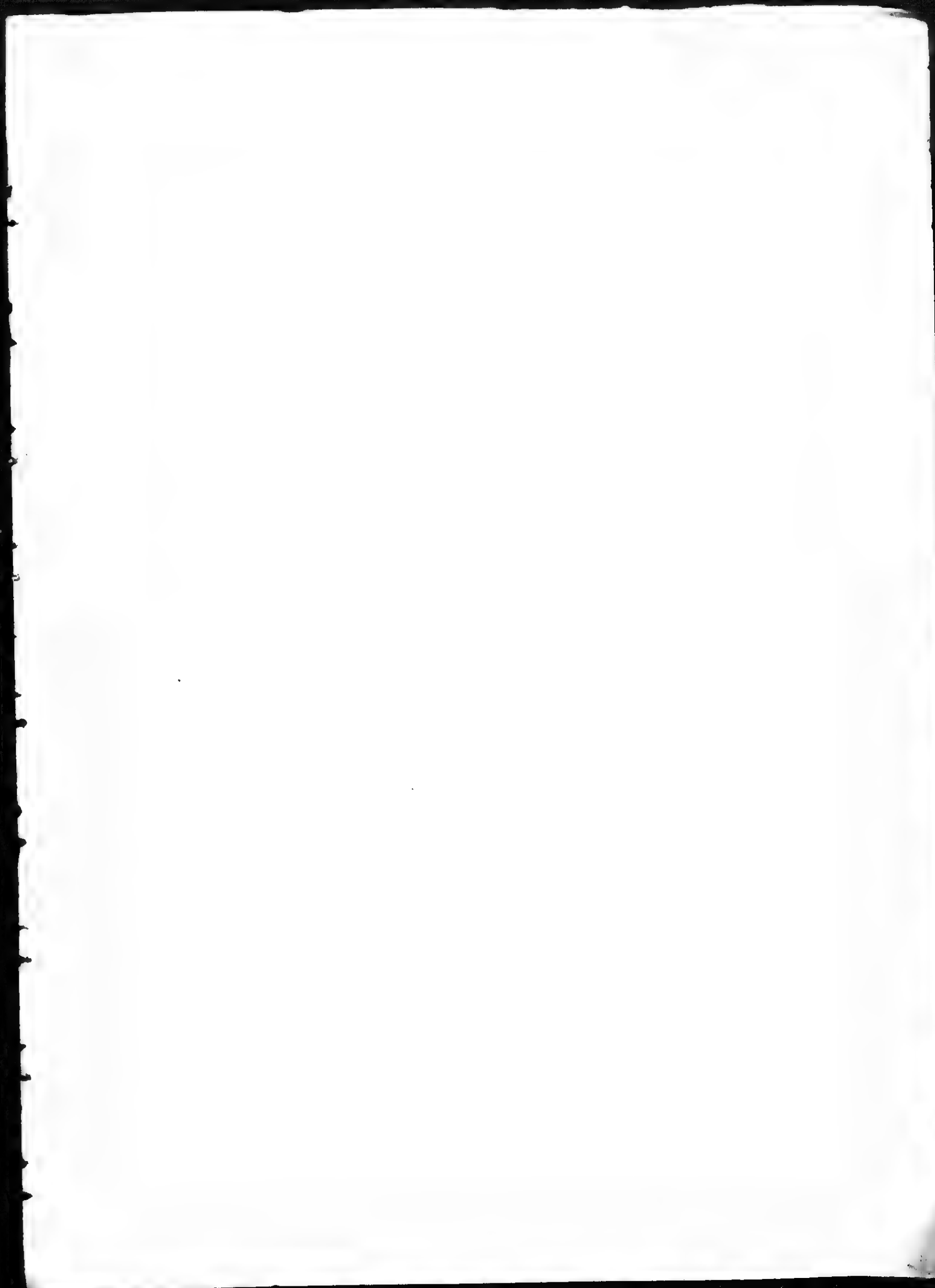
MR. JEFFERS: I am willing to stipulate.

MR. DONOVAN: What is the stipulation, that it was posted?

MR. JEFFERS: I am perfectly willing to stipulate that the notice was posted for 60 days, 90 days or on the union bulletin board.

\* \* \* \* \*

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**BRIEF FOR PETITIONER** [REDACTED]

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**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**No. 19,146**

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**LOCAL 349, INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, AFL-CIO,**

**Petitioner,**

**vs.**

**NATIONAL LABOR RELATIONS BOARD,**

**Respondent.**

---

**On Petition for Review and Cross-Petition for Enforcement  
of an Order of the National Labor Relations Board.**

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United States Court of Appeals  
for the District of Columbia Circuit  
**SEYMOUR A. GOPMAN, of  
KASTENBAUM, MAMBER, GOPMAN,  
EPSTEIN, & MILES**

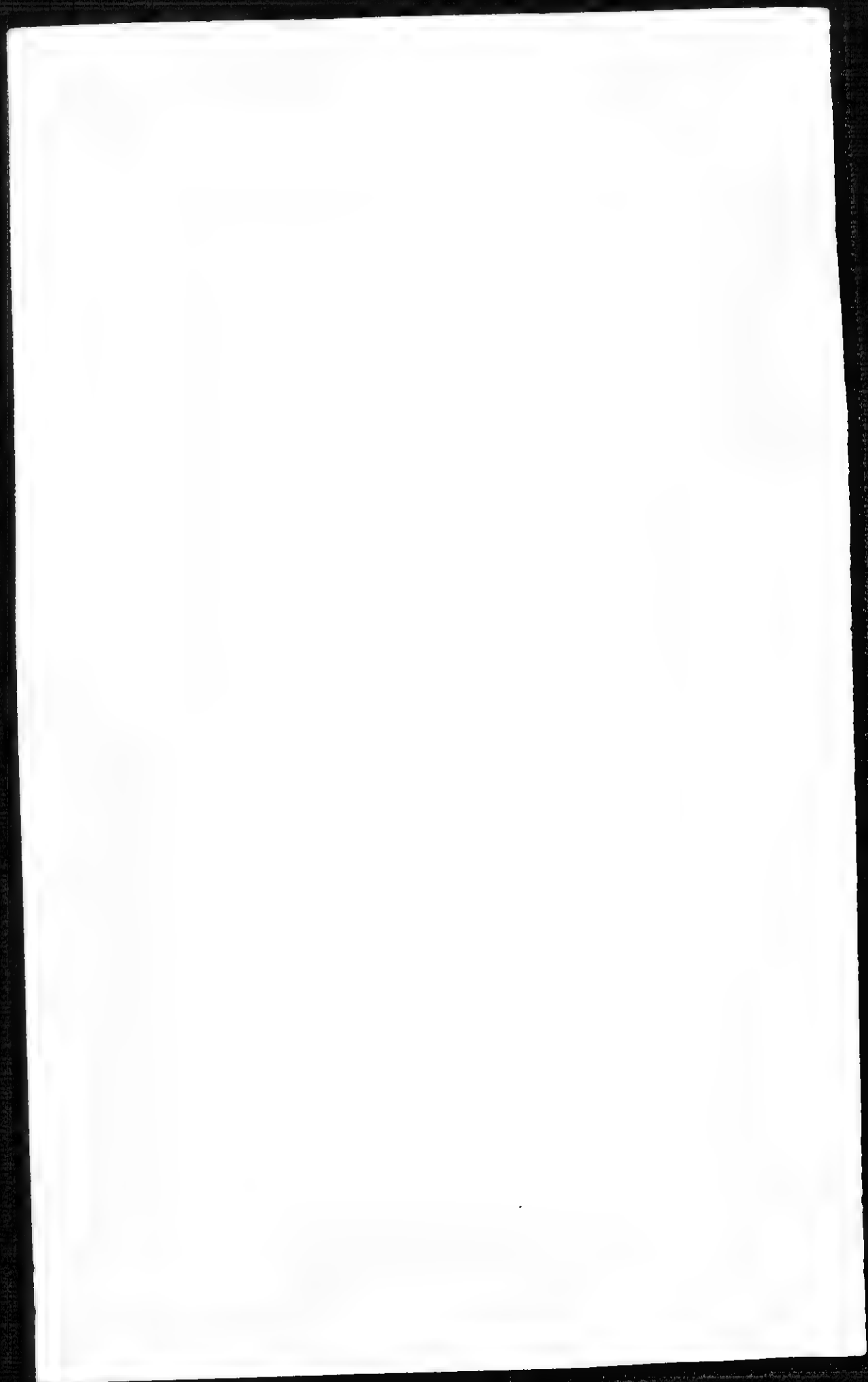
**FILED JUN 21 1965 Suite 210, One Lincoln Road Building  
Miami Beach, Florida 33139  
Counsel for the Petitioner**

*Nathan J. Paulson*  
**CLERK**

[REDACTED]

[REDACTED]

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## **STATEMENT OF THE QUESTIONS PRESENTED.**

The questions are:

1. Where there was no direct evidence connecting the union steward with a cessation of work by employees, except the fact that he was present at the time the employees, including the steward, quit, may the Board find union responsibility under 8(b)(4)(i)(ii)(B) for a stoppage based solely on previous quitting by the steward when advised of a non-union condition, when at the previous quitting the other employees also left the job and when in neither incident did the steward request or instruct the men to leave.

2. May a union be held responsible under 8(b)(4)(i)(ii)(B) of the Act when the steward informs a sub-contractor that he will not work in the presence of a non-union condition, and that this is a purely personal position that the steward is taking, and when asked by the sub-contractor about a work stoppage if a non-union condition persists, replies in the affirmative, or that he does not know what the men would do.

3. May a union be held responsible under 8(b)(4)(i)(ii)(B) of the Act by the actions of its members taking place outside the presence of any officers, agents or employees of the union in refusing, to work alongside a non-union condition, when the union has neither instigated, ratified or confirmed the work stoppage and such responsibility is based solely on findings that agents of the union induced work stoppages at other locations.

4. Was the Board correct in finding that the Trial Examiner committed no prejudicial error, and in affirming the rulings of the Trial Examiner, when the Trial Examiner

admitted hearsay and incompetent evidence into the record over objection of the union and considered such evidence in making resolutions of credibility, in drawing inferences and conclusions, and in making findings of fact upon which the Board relied in rendering its decision.

5. Was the Board correct in accepting the Trial Examiner's findings of credibility and his actions in drawing inferences where such resolutions of credibility and drawing of inferences were all unfavorable to the respondent, when the Board refused to follow the Trial Examiner's reasoning and philosophy in attributing responsibility and guilt to the union, but followed its own course of reasoning based on facts as found by the Trial Examiner.



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**BRIEF FOR PETITIONER AND JOINT APPENDIX**

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# INDEX

	Page
Statement of Questions Presented .....	Prefaced
Jurisdictional Statement .....	1
Statement of the Case .....	1
Statute Involved .....	7
Statement of Points .....	8
Summary of the Argument .....	9
Argument .....	14
(a) The Village Green Job .....	16
(b) The Miami Laundry Job .....	22
(c) The Publix Markets Job .....	25
(d) The Pan Am Job .....	28
A. The Board's Treatment of the Trial Examiner's Report .....	34
B. The Trial Examiner's Theory of Union Responsibility .....	36
Conclusion .....	38
Certificate of Service .....	38

## TABLE OF CASES

	Page
Gulf Coast vs. NLRB, (CA-5; 1964) 332 F. 2d 31 ---	18
I.B.E.W. et al. vs. NLRB, 341 U. S. 694, 71 Sup. Ct. 954, 95 L Ed 1298 -----	14
*International Ladies' Garment Workers Union, AFL- CIO vs NLRB (CADC 1956) 237 F. 2d 545 ---	15, 32, 36
*Local Lodge No. 1424, International Association of Machinists vs. NLRB, 362 U. S. 411, 80 S. Ct. 822, 4 L. Ed 832 -----	11, 17, 18
NLRB vs. International Longshoremen's Warehouse- men's Union, Local 10 (CA-9; 1960) 283 F. 2d 558 -----	15
*NLRB vs. Murray Ohio Manufacturing Co. (CA-6; 1964) 326 F. 2d 509 -----	11, 18
*NLRB vs. P. R. Mallory & Co. 237 F. 2d 437, (CA-7, (1956) -----	10, 15, 16, 20, 24
*NLRB vs. Ray Smith Transport Co. (CA-5; 1951) 193 F. 2d 142 -----	20
NLRB vs. Ryder (CA-4; 1962) 310 F. 2d 234 -----	18
NLRB vs. Shen Valley Meat Packers, Inc. 211 F. 2d 289 (CA-4; 1954) -----	15
NLRB vs. Teamsters' Local 815, 290 F. 2d 99, (CA-2; 1961) -----	15
Reynolds vs. Local 522, I.B.T. (D. Ct.-NJ 1958) 35 C. C. H. L. C. 71, 906 -----	15

	Page
Superior Engraving Company vs NLRB, 183 F. 2d 783, (CA-7; 1950) .....	10, 14
United States vs. International Union, 89 F. Supp. 179 .....	32

### NLRB CASES

*Building and Construction Trades Council of Tampa, AFL-CIO et al, and Tampa Sand and Material Co., 132 NLRB No. 124, (1961) .....	10, 16, 20, 24, 32, 33
International Longshoremens' Union (Sunset Line and Twine Co.) (1948) 79 NLRB 1487 .....	10, 15
I.B.E.W. et al (The Martin Company) 131 NLRB 1000, (JA-75) .....	30
Kaiser Aluminum and Chemical Corp. 104 NLRB 873, pages 876 and 877 .....	31
Local 28, Sterotypers' and Electrotypers' Union (Capi- tal Electrotpe Company, Inc.) 140 NLRB No. 49, (1963) .....	29
Local 84 International Association of Bridge, Struc- tural and Ornamental Iron Workers, 129 NLRB 961, 978-979 .....	14, 17
Local 657, I. B. T., (1956) 115 NLRB 981, 998 .....	12, 31
Poinsett Lumber Manufacturing Co., 107 NLRB 234 .....	14
News Printing Co. (1956) 116 NLRB 210 .....	18

\*Cases or authorities chiefly relied upon are marked by asterisks.



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of June 23, 1947, C. 120, 61 Stat. 136, as  
amended, 1959, 49 Stat. 449, 61 Stat. 136, 73 Stat.  
519, 29 U.S.C. Sec. 151, et seq.,

Section 2 (13) .....	15
Section 8 (b) (4) .....	Prefaced, 1, 2, 7, 8, 9, 14, 15, 22, 28, 29, 30, 31, 34, 36, 37
Section 10 (b) .....	2, 8, 11, 17, 20
Section 10 (e) .....	1
Section 10 (f) .....	1



## **JURISDICTIONAL STATEMENT**

On February 7, 1963, Dade Sound and Controls, Inc., hereinafter called "Dade Sound", filed a charge (JA 3,66), alleging violation of Section 8(b)(4)(i)(ii)(B) against Local 349, International Brotherhood of Electrical Workers, AFL-CIO, hereinafter called the "Union" or "Local 349". After Complaint, Answer and trial, the Trial Examiner issued his report on August 21, 1963. The Union filed exceptions to the finding of violation of Section 8(b)(4)(i)(ii)(B). On November 4, 1964, the Board issued its decision and Order (JA 65-80). A review of said Order was sought by Petition for Review and to Set Aside or Modify filed with this Court on January 16, 1965. Jurisdiction of this Court is invoked under Section 10(f) of the National Labor Relations Act as amended Aug. 28, 1958, Pub.L. 85-791, Sec. 13, 72 Stat. 945; Sept. 14, 1959, Pub.L. 86-257, Title VII, Sections 704(d), 706, 73 Stat. 544; Title 29 U.S.C., Sec. 160, sub-section (f).

In its Answer to Petition for Review, the Board cross petitioned for enforcement of its Order. With respect to the Cross Petition, the Court has jurisdiction under Section 10(e) of the Act.

The Board's decision and Order are reported in 149 N.L.R.B. No. 46 (JA 65-80).

## **STATEMENT OF THE CASE**

The Petitioner is a local labor organization (JA 3,6) engaged in representing employees in the electrical industry. Part of the jurisdiction and claims is the installation of sound and speaker equipment, including wiring for intra-building communications, (JA 66,182-189). In 1962, the union became involved in a dispute with the charging party, Dade Sound. As a result thereof, the union signed a settle-

ment agreement which was enforced in the Circuit Court of Appeals for the Fifth Circuit, (JA 66). The union was required to post its agreement to cease and desist from violating sections 8(b)(4)(i)(ii) for the purpose of having employees cease doing business with Dade Sound (JA 93,219).

On February 7, 1963, Dade Sound filed another charge against the union (JA 3). A Complaint subsequently issued wherein the union was charged with engaging in illegal conduct at five construction sites (JA 4). Responsibility for the claimed violations were laid to the feet of the stewards, and the foremen, who were alleged to have the authority to act as stewards and to represent the union (JA 83,89). The union denied all of the General Counsel's charges. The incidents for which the union was held liable at the sites are set out hereafter.

(a) The Village Green Crown Lanes job:

On July 27, 1962, not within the 10(b) period, one ~~Stack~~ <sup>Statecavage</sup> ~~Stack~~ <sup>Stadeavage</sup>, also known and referred to frequently as "Stack", (and so mentioned hereafter), a representative of J. M. Coker, Inc., hereinafter called "Coker", came to the Village Green Crown Lanes, hereinafter called "Village Green", construction site where a bowling alley was being constructed (JA 68). With Stack was one, MacMillan, an employee of Dade Sound. Coker had the sub-contract to install the communications system. At the site they were met by McLain, the union steward, who learned that MacMillan was a member of the Communication Workers of America, hereinafter called "CWA". McLain commented that MacMillan "just can't work out" (JA 119). McLain left the job after awhile (JA 200). The other electricians and Logan, the foreman, also left, (JA 119). McLain admitted he left because the union had not been awarded the sound work (JA 201). On July 28th, he called to the union hall where he



was told to return to work or he might be replaced (JA 180,202). This he did. On these occasions, and others, MacLain had stated that his feelings in these matters were a personal thing to him. He also testified to this effect (JA 202). Stack assigned the sound work to Burns & Jaeger, hereinafter called "Burns", but reassigned the work to Dade Sound in September. On September 13th, Stack, MacMillan and another Dade Employee, Oliviera, came to the site, (JA 122). MacMillan and Oliviera were the only two employees Dade had, and they were both officers of Dade Sound (JA 161, 144-145). After lunch, all the electricians working for Burns, members of the union, including the steward, McLain, and foreman Logan, did not work and remained away for the balance of the day and all of the next day (JA 113,148). There was no evidence that McLain requested the employees to strike on September 13th or 14th. The evidence showed only that Logan, the foreman, learned of the presence of the non-union sound man (JA 122,148).

(b) Miami Laundry job:

During September, 1963, Miami Laundry and Dry Cleaning, hereinafter called "Miami Laundry", was being constructed. Coker had the sound contract and subcontracted the labor to Dade Sound (JA 17). R. L. O'Donovan was the electrical contractor. His employees were union members (JA 17,71). Stack and MacMillan came to the site and spoke to Diaz, the electrician foreman, and to Disney, the union steward. Disney checked MacMillan's card and told Stack that he, Disney, could not work with Dade Sound (JA 71). The Board found that this statement represented his personal view (JA 71). The Board found (accepting the Trial Examiner's determination on this issue), that when Stack asked the steward if Dade Sound came on the job would there be a work stoppage, that Disney answered there would be

(JA 18,71). The work was then awarded to O'Donovan. The union witnesses denied this version of the incident (JA 207-211).

(c) The Publix Markets job:

In February, 1963, Publix Markets, Inc., hereinafter called "Publix", was having a warehouse built and it assigned the sound work to Coker, which sub-contracted the labor to Dade Sound. Stack, MacMillan and Oliviera came to the job on February 4, 1963, (JA 72). Stamp, the union steward, asked for their cards. After learning their cards were CWA cards, Stamp spoke to Goldsmith, the superintendent for the general contractor, and told him that he (Stamp) could not work with these men (JA 72). Stack, MacMillan, Stamp and Goldsmith went to Newsom, the chief Publix official at the job site (JA 72). Stamp repeated his position to Newsom; Stamp stated his feelings were personal and that he could not work with anyone not referred through the Union hall (JA 72). When asked about what the other electricians would do, he replied that he had no idea what they would do, (JA 194). The work was subsequently awarded to a union employer (JA 72).

(d) The Pan American Hospital job:

On February 6, 1963, at the site of the construction of the Pan American Hospital job, hereinafter called "Pan Am", Coker had received the contract for the sound work and had sub-contracted the labor there to Dade. MacMillan and Oliviera came to the site. Taylor, a journeyman electrician, checked their cards. Taylor was not a steward (JA 30,73,184), and the Board did not find that any agent or steward of the Union participated in the events at this site. Taylor told the superintendent, his foreman, that the "non-union" sound men were on the job. Harrison, the foreman,

tried to check with the Union hall, but could not reach any official of the Union (JA 31,76). After lunch all of the electricians "members of the Union" left the job and remained away for two and a half days (JA 74).

Harrison and two or three employees went to the Union hall on February 7th and told the Assistant Business Agent, Albury, of the events (JA 74,182,176). There is no evidence that the Union, through any agent, had any prior knowledge of this particular dispute. Albury told the men to return to work (JA 177,182). They returned to work the following Monday. There is no evidence that the employer complained to the Union or requested new men to replace them on the job (JA 47).

On February 19th, MacMillan and Oliviera returned to the job and the same employees left again (JA 74, 177). Thereafter, an arrangement was made between Kammer and Woods, the employer of the electricians at Pan Am, hereinafter called "Kammer", Brush, Kammer's superintendent, Stack, and Sullivan, an electrical engineer for that job site. The arrangement was that MacMillan and Oliviera would work only in the evening, and the electricians only during the day. (JA 74) On March 4th, however, MacMillan and Oliviera came back to the job and worked most of the week. The electricians again left the job. There is no evidence that Kammer complained to the Union about the absence of the men from the job. On March 11th, when Kammer requested it, a new crew of electricians were sent to the job by the Union (JA 33,170-171). Harrison and his crew were transferred by Kammer to another job (JA 33,74).

The Board found that the Union violated the Act, although there was no evidence that the Union made a direct appeal to its members at this site, basing its decision on other incidents previously set forth herein. Two members of

the Board dissented, feeling that there could not be responsibility without action or agency (JA 76).

(e) The Lincoln National job.

At the Lincoln National job, the Board found no violation. Laschauer, the foreman, was found by the Trial Examiner to be a steward who threatened and coerced his employer, Kammer, and others (JA 50). The Board overturned the Trial Examiner's finding that Laschauer was a steward and determined that his individual actions did not bind the Union (JA 77,78).

The testimony showed without contradiction that stewards could only be appointed by Union action (JA 78, 168, 169), that foremen were not stewards (JA 168,194,197, 177), that stewards had no authority to remove men from the job (JA 175,181), that the men could and did work without stewards being present on the job (JA 170,179, 181), that there was no Union policy requiring men to cease work when the steward left (JA 170,184,181,194,202), that there was no Union policy forbidding the men from working with non-union men or Dade Sound (JA 169,181,182,184-185, 198,202-204), that the By-Laws and Constitution did not require the men to stop work when a non-union condition arose or when the steward left the job (JA 169,170, 181), that the Union had no control over the appointment or tenure of foremen, nor their activities, except as members (JA 169,173-174, 193-194,197,206), that the foremen were responsible to their employers and could discharge, discipline and direct the men (JA 169,177-178,194-197,206).

The testimony also showed that on crucial occasions when higher Union officials were advised of incidents, these officials succeeded in effecting a return to work of protesting employees (JA 170,177-178, 181-182,201) or preventing



new stoppages (JA 171) or clearly disavowing Union participation, ratification or acquiescence in the members actions (JA 41).

#### **STATUTE INVOLVED:**

Section 8(b)(4)(i)(ii)(B) provides as follows:

"b) It shall be an unfair labor practice for a labor organization or its agents—

\* \* \*

"(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

\* \* \*

"(B) Forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section

159 of this title: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;"

\* \* \*

"As amended Sept. 14, 1959 Pub.L. 86-257, Title II, Sec. 201(e), Title VII, Secs. 704(a)-(e), 705(a), 73 Stat. 525,542,545, Title 29 U.S.C. Sec. 158."

### STATEMENT OF POINTS

1. The Board had no evidence on which to base a finding of violations at the Village Green Crown Lanes job. There is not one bit of evidence of illegal activity connected with the work stoppages of September 13th and 14th. The Board relied on actions occurring outside the 10(b) period and considered these acts not only as background, but as evidence of the violation.

2. The Board considered the individual actions and statements of the steward, MacLain, at the Village Green job, Disney at the Miami Laundry job, and Stamp at the Publix job, as actions taken as officers or agents of the Union, although on each occasion the steward informed those to whom he was talking that his actions and statements were "personal" or individual.

3. The Board erroneously considered the acts of union members, who were neither officers, agents or employees of the Union, in finding responsibility for the events at the Pan Am job, although admitting there was no direct appeal to the members to quit work. The Board erroneously considered actions of Union stewards which the Board consid-

ered illegal at other job sites at other times as evidence of Union efforts to protect the Union's jurisdiction at this site.

4. The Board failed to consider or attempt to evaluate all the uncontradicted evidence in the record that there was no Union policy against working with non-union or Dade Sound men.

5. The Board erroneously reviewed the Trial Examiner's rulings and found no prejudicial error was committed when the Trial Examiner admitted into the record hearsay and incompetent evidence of statements made by foremen, Logan, at the Village Green job, Harrison at the Pan Am job, and Laschauer at the Lincoln National job, and an individual, Taylor, at the Pan Am job, when these persons were not agents of and could not bind the Union. The Trial Examiner considered these statements in resolving credibility, drawing inferences, finding facts and making conclusions of law.

6. The Board erroneously accepted the Trial Examiner's resolutions of credibility, drawing of inferences, and finding of facts, where all such resolutions of credibility and drawing of inferences were resolved against the Union, when it discarded his theory of law and philosophy of the case, when the Board had rejected certain conclusions of fact and law made by the Trial Examiner.

### **SUMMARY OF THE ARGUMENT**

Section 8(b)(4)(i)(ii)(B) of the Act prohibits the inducement and encouragement of employees to cease work, and threatening, restraining and coercing employers for the purpose of forcing an employer to cease doing business with the primary employer with whom the Union has a dispute.

The inducement and encouragement contemplated in the Statute, or threats, coercion or restraint contemplated, must be actions engaged in by the Union acting through its authorized agents or employees. The Union is not responsible for the acts of its members which the Union did not instigate nor which the Union did not confirm or ratify thereafter. **Superior Engraving Company vs. N.L.R.B.** 183 F.2d 783 (CA-7; 1950). Minor Union officials who are not engaged in acting and representing the Union on a full-time basis may act as individuals, as ordinary members. **N.L.R.B. vs. P. R. Mallory & Co.**, 237 F. 2d 437 (CA-7; 1956).

General Counsel has the burden of establishing both Union agency and the scope of the agent's authority. **International Longshoremen's Union (Sunset Line & Twine Co.)** 1948, 79 N.L.R.B. 1487. Of course, he also must carry the burden with respect to whether the acts engaged in are sufficient to come within the meaning and terms of "induce or encourage" or "threaten, coerce or restrain". The General Counsel failed to carry such burden in the four cases where the Board found violations. There is no substantial evidence in the record to justify and uphold the Board's order.

At the Village Green job, the Union steward, acting as an individual quit work of his own volition. There is no evidence in the record showing that this quitting was an inducing factor which instigated the quitting of other employees at that job site on September 13th and 14th. A Union steward may exercise his rights as a union member and refuse to work under obnoxious non-union conditions. **Tampa Sand & Material Co.**, 132 NLRB 1564 (1961).

Although admitting this, the Board relied on actions engaged in by the Union steward which occurred prior to

the 10(b)<sup>(1)</sup> period, which acts could not then be prosecuted because of the Board's Statute of Limitations.

While characterizing their examination of the events occurring prior to the 10(b) period as an examination of background material, the Board, in fact, erroneously relied on these events as the actual evidence of the violation which occurred during the 10(b) period. This was error. **Local No. 1424, International Association of Machinists vs. N.L.R.B.** 362 U.S. 411, 80 S.Ct. 822, 4 L. Ed. 2d 832, **N.L.R.B. vs. Murray Ohio Manufacturing Co.** (CA 6; 1964) 326 F. 2d 509.

The evidence relied on by the Board which occurred prior to the 10(b) period were not in fact acts of inducement or encouragement nor were they in fact threats, restraint or coercion under the Act.

At the Miami Laundry job, the Board erroneously found that the Union, through its steward, threatened, restrained and coerced Coker. The actions of the Union steward there, Disney, were individual actions taken as a member and characterized as such by Disney. In addition, his actions were not a threat to the employer made by the Union, and if in fact Coker considered Disney's statement as a threat, such conclusion was unreasonable.

At the Publix Markets job, the Board erroneously concluded that when the Union steward Stamp reported to the

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<sup>(1)</sup>Sec. 10(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. . . .



job superintendent that he could not work under a non-union condition, then being initiated at the job site by Coker, that his actions were the actions of the Union, and not personal actions of Stamp taken as an individual member, although Stamp so qualified his statements and his threat to quit. The Board further erroneously concluded that when Stamp was asked what the men would do if he left the job, that he was acting as a Union official when he stated that he did not know exactly what they would do. There was no substantial evidence to find the Union guilty of a violation at this job site.

At the Pan Am Hospital job, the Board found that the Union violated the Act although no direct appeals to its members were made to quit work, despite the fact that no Union officials, whether higher officials, business agents, nor minor officials, to wit, stewards, were present at that job site at the time that the incidents relied on took place. The Board erroneously relied on the fact that at other construction sites, at other times, other Union agents (stewards) had been found to have violated the law by inducing and encouraging employees to quit, or by threatening, coercing and restraining employers with an illegal object. Such reliance was misplaced and contrary to the law. **Local 657 I.B.T.** (1956) 115 N.L.R.B. 981, at 998.

The Board failed to consider that the over-all Union policy established by its Executive Board and head business agents acting on an order from the N.L.R.B. as enforced by the Fifth Circuit Court of Appeals was to the effect that the Union would not engage in the illegal activities of inducing and encouraging employees not to work, and threatening, coercing and restraining employers both with the object of forcing them to cease doing business with Dade Sound.

The Board failed to consider that in each case when higher union officials were consulted or advised of incidents,

these officials took every possible action to effect a return to work of protesting employees, or to prevent further work stoppages, or to clarify the Union's position to those involved that the Union was not a participant in these incidents. The Board failed to consider that these were an active statement of Union policy and that there was no Union policy promulgated either in by-laws, constitution, at meetings, or through higher Union officials that there was a policy that the men would not work with Dade Sound employees.

The Board erroneously decided that the Trial Examiner committed no prejudicial error, when the Trial Examiner considered hearsay and improper testimony regarding statements made by Union members who were not Union officials and considered this evidence in resolving issues of credibility in drawing of inferences, finding of fact, and making conclusions of fact and law.

The Board erroneously accepted the Trial Examiner's resolutions of credibility and findings of fact when all such resolutions were made against the Union. The Trial Examiner had a predisposition or predilection to find against the Union demonstrated by injecting into this case a new and foreign philosophy requiring active Union involvement in a fashion that was contrary to established Union principles and traditions, and which would result in permanent damage to the Union's welfare. The Trial Examiner departed from established Board and Court case law while making his inquiry into the acts alleged to be illegal by the General Counsel. If the Trial Examiner had followed the proper legal procedures, his resolutions of credibility, his findings of fact, and his conclusions of law should have resulted in a dismissal of the case against the Union.

### ARGUMENT

Since the enactment of Taft-Hartley,<sup>(1)</sup> both the Board and the Courts have had to wrestle with the broad, inclusive and expandable terminology of the provisions of 8(b)(4).<sup>(2)</sup> The amendments of 1959<sup>(3)</sup> did not serve to clarify the existing problems. New actions, previously not in terms prohibited, were brought under the sweep of Board control. The instant case deals primarily with the question of whether or not the activity engaged in or found to have been engaged in by the Union members or its agents were committed as Union officials and come within the meaning of the terms, "induce" or "encourage" found in 8(b)(4)(i) or "threaten, coerce or restrain" found in 8(b)(4)(ii).

Certain issues are general to all of the violations found to exist for which the Union seeks review. Discussion of Union responsibility and agency would seem first to be in order.

The Union, being an association, acts through its officers, directors, agents and employees, just as does a corporation. No authority is needed to proclaim that a corporation would not be responsible for the acts of a mere stockholder. Similarly, a Union is not responsible for the acts of its members. **Local 84, International Association of Bridge Structural and Ornamental Ironworkers**, 129 N.L.R.B. 961, at pages 978-979; **Superior Engraving Co. vs. N.L.R.B.**, 183 F. 2d 783 (CA-7; 1950); **Poinsett Lumber Manufacturing Co.**, 107 N.L.R.B. 234.

(1) 29 USC, Para. 151, et seq., 61 Stat. 136.

(2) See **L.B.E.W., et al., vs. N.L.R.B.** 341 U.S. 694, 71 Sup. Ct. 954, 95 L. Ed. 1298, where the Supreme Court announced that the definition of the term "inducement" contemplated in the Act must not be restricted.

(3) In 1959 a new provision "ii" was added wherein threats, coercion and restraint against employers were prohibited.

And all of the acts of Union agents cannot be placed at the door of the Union. Union officers and agents have private lives. Union officers, agents and employees can act as individuals and not as Union officials. **N.L.R.B. vs. Teamsters' Local 815**, 290 F. 2d 99 (CA-2; 1961) **N.L.R.B. vs. Shen Valley Meat Packers, Inc.**, 211 F. 2d 289 (CA-4; 1954); **Reynolds vs. Local 522**, I.B.T. (D. Ct.—N.J.—1958) 35 C.C.H. L.C. 71, 906; **N.L.R.B. vs. P. R. Mallory & Co.**, 237 F. 2d 437 (CA-7; 1956).

An agent's employment may be exclusive, dual or transitory. Certainly a Union steward, a working steward, is first and foremost an employee, and executes his stewardship only on those occasions when immediate Union representation is necessary, generally covering minor problems, when higher Union officials are not present nor required.

Section 2(13)<sup>(1)</sup> of the Act provides the General Counsel with some relief in his efforts to establish Union responsibility for acts alleged to have been engaged in by the Union. The common law doctrine of respondeat superior is still the vehicle through which a Union is found liable for the acts of its agents. **N.L.R.B. vs. International Longshoremen & Warehousemen Union, Local 10** (CA-9; 1960) 283 F. 2d 558; **International Ladies Garment Workers Union, AFL-CIO vs. N.L.R.B.** (CA-2; 1956) 237 F. 2d 545. The General Counsel has the burden of establishing both Union agency<sup>(2)</sup> and Union responsibility for the alleged acts and that these acts amounted to inducement or encouragement under 8(b)(4)(i), or threats, coercion and restraint under 8(b)(4)(ii). This we submit he has failed to do in the instant case.

<sup>(1)</sup>In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

<sup>(2)</sup>This principle was set forth in *International Longshoremen's Union (Sunset Line & Twine Co.)* 1948, 79 N.L.R.B. 1487.

(a) **The Village Green job.**

At Village Green the Board focused its examination of this dispute on the actions of McLain, (JA 67-70). In this regard, the Board was on much firmer legal footing than the General Counsel who offered the statement of actions of Logan, the job foreman,<sup>17</sup> characterizing him as an agent of the Union, and the Trial Examiner who accepted such testimony and considered the statements and actions of Logan in determining Union responsibility, (JA 11-13).

McLain was the steward. He could bind the Union, if he acted within the scope of his authority, apparent, implied or actual. But certainly he must act. It is not enough to show that at a job site where he was present a work stoppage occurred. He may be the staunchest advocate of militant Unionism to have ever been bred. However, without some showing that he did something related to his Union authority or agency, something besides leaving the job, liability for inducing or encouraging employees cannot be levied. (*Tampa Sand & Materials Co., supra*). The stewards were all appointed for individual jobs by the Union. Their appointments were not permanent but continued under Union sufferance and changed from job to job, (JA 168-169). Certainly this does not indicate a permanent position with constitutional authority, such as, members of the executive board, officers and business agents of the Union. This authority is as limited as the authority of the stewards in *N.L.R.B. vs. P. R. Mallory & Co., supra*.

Yet, the Board assessed liability against the Union for the mere act of McLain in leaving the job site. Precisely this

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<sup>17</sup>It is interesting to note that from the outset the General Counsel's theory in the case was that the job foreman on the job sites were Union agents and/or stewards. See the Complaint and particular statements required of the General Counsel by the Trial Examiner's division, (JA 83-89). Obviously, the Board's approach is a clear departure from this view.



and nothing more. No description or chronicle of McLain's actions or statements, if any, are recorded for September 13th and 14th. Only that the electricians left the job after lunch. It is not even shown that he learned of the presence of the Dade Sound employees. Only Logan's knowledge of their arrival is described, (JA 122,148,202). And his statements should not be considered as binding on the Union. **Local 84 International Association of Bridge, Structural and Ornamental Iron Workers, supra.**

But the Board points to two incidents in July and August. The Board admits these occurred prior to the 10(b) limitation, (JA 68), but claims they are properly considered as background material. Without entertaining, at this time, the vital question of whether either of these incidents constitute inducement or coercion, we should first consider whether these incidents are being considered merely as background, or as actual evidence of the violation found to have occurred on September 13th and 14th. Events occurring prior to the 10(b) period may be considered by the Board as shedding some light, as filling out the picture, and as tools to be used for the examination of events and actions occurring within the 10(b) period which are being investigated. However, the background material may not be used alone as the evidence of the violation occurring within the 10(b) period. **Local Lodge No. 1424, Machinists, et al. vs. N.L.R.B., supra.** There, the United States Supreme Court said:

"It is doubtless true that Section 10(b) does not prevent all use of evidence relating to events transpiring more than six months before the filing and service of an unfair labor practice charge. However, in applying rules of evidence as to the admissibility of past events, due regard for the purposes of Section 10(b) requires that two dif-

ferent kinds of situations be distinguished. The first is one where occurrences within the six-month limitations period in and of themselves may constitute, as a substantive matter, unfair labor practices. There, earlier events may be utilized to shed light on the true character of matters occurring within the limitations period; and for that purpose Section (10(b) ordinarily does not bar such evidentiary use of anterior events. The second situation is that where conduct occurring within the limitations period can be charged to be an unfair labor practice only through reliance of an earlier unfair labor practice. There the use of the earlier unfair labor practice is not merely "evidentiary," since it does not simply lay bare a putative current unfair labor practice. Rather, it serves to cloak with illegality that which was otherwise lawful. And where a complaint based upon that earlier event is time-barred, to permit the event itself to be so used in effect results in reviving a legally defunct unfair labor practice."

And in **N.L.R.B. vs. Murray Ohio Manufacturing Co.**, *supra*, the Sixth Circuit Court said, in referring to the **Machinists** case above:

**"They can be used as background only if there is evidence, independent of such background, of new violations occurring within the six months period of statutory limitations."**

To the same effect see also **Gulf Coast vs. N.L.R.B.** (CA-5; 1964) 332 F. 2d 31; **N.L.R.B. vs. Ryder** (CA-4; 1962) 310 F. 2d 234; **News Printing Co.** (1956) 116 N.L.R.B. 210.

If the General Counsel had shown that McLain took some action on September 13th or 14th, which action was ambiguous in meaning, the Board could have examined his

actions in July and August to determine the motivation, the intention, and significance of his actions on September 13th and 14th. It is not legally logical to state that since, in July and August, McLain did certain things, and a certain series of events occurred, resulting in a certain conclusion, that when on September 13th or 14th that same conclusion occurs, that McLain took the same actions and the same series of events occurred. Here there is no proof that McLain acted at all on September 13th and 14th. There is no testimony that McLain knew of the arrival of the non-Union sound men, except his own (JA 202); there is no testimony that McLain walked off the job first; there is no testimony that McLain spoke to any of his fellow employees; there is no testimony that McLain spoke to MacMillan, Oliviera or Stack; there is no testimony that McLain made any telephone calls. More consistent with the scant details supplied for September 13th and 14th would be the conclusion that Logan, the job foreman, on his own called the men from the job. Certainly, the incidents that had occurred previously would not tend to negate the possibility that Logan would so proceed. His employer, had been performing this work up until that time, and now it was taken away from them. His union brothers had been performing the work, now it was taken away from them. Logan could just as well have been protecting the Union's interest. Just as consistent with the Board's theory is the theory that Logan himself, a Union member, could have used his authority as foreman to call the men from the job, and to vindicate his personal Union philosophy.

It must be recalled that McLain in July reported to the Union Hall and the Union through Assistant Business Agent Albury, immediately informed him that if he did not return to work, he might be replaced; that McLain did return to work after such warning. This Union policy far outweighs the inference that the Union engaged in the actions of Sep-

tember 13th and 14th, or that McLain was acting with Union sanction or encouragement. The conclusions of the Trial Examiner and of the Board that the actions of September 13th and 14th were instigated by McLain are entirely unwarranted and stem solely from a predilection to believe the worst of people. See **N.L.R.B. vs. Ray Smith Transport Co.** (CA-5); 1951, 193 F. 2d 142.

Let us now examine again the incidents of July and August to see if these constitute inducement. In July, it was shown that McLain, after learning that MacMillan was a CWA member performing work claimed by I.B.E.W. walked off the job without communicating with any of the men who were present. Thereafter, the record is not clear as to how long thereafter the other men also quit. The testimony of Union policy, by-laws and constitution all show that the men may continue to work without a steward being present at the job site, (JA 170,174,181). McLain reports to the Union hall and is told to return to work. Certainly, those acts alone are not evidence that the Union instigated, directed and participated in the walk-out in July. As a matter of fact, McLain stated at that time that it was his personal view, (JA 132,200-202), and at the hearing stated that his own views were that he would <sup>not</sup> work with non-Union men. The Union steward may act as an individual just so long as it is clear that he is dropping his union badge of authority when so acting. (**Tampa Sand and Material Co., supra**, and **N.L.R.B. vs. P. R. Mallory & Co., supra**). This McLain did. Obviously, there is no violation here. A great gap is present in the General Counsel's theory. Well, how is it filled out? By the other acts occurring outside of the 10(b) period, those in August. In August, this amazing conversation between Stack and McLain appears. McLain denies that he ever stated to Stack (JA 203) that if he walked off the job that the men there would follow him. Stack cannot supply any surrounding circumstances, he does not

recall how the conversation came up, only that McLain gratuitously volunteered this information. Admitting arguendo, the event is correctly described, this conversation did not take place within the framework or context of a labor dispute. How could McLain have been threatening Stack? McLain's employer had the job of doing the soundwork at that time.

Union members were performing the soundwork. There were no differences or disagreement between Coker and the Union. Dade Sound was not on the job nor was there any indication that they would return to the job. This conversation was as innocuous as one taking place in a bar, a restaurant, or at a dinner party. The statements, if made by McLain, were no more than a personal view that he had, and could not at that time be binding on the Union, no more than a statement to the effect that the United States would go to war (by McLain) be binding on the President and the White House.

Further, McLain's personal views of what the men would do is certainly not the issue. The particular issue is what the Union policy is in this respect. The critical question on this point is whether or not the men are required by Union policy, By-laws or Constitution to quit work whenever the steward quits, or whether this has been and is a common practice. No evidence that such a common practice existed appears in the record. As a matter of fact, with respect to the incident in July, the record is not clear that the Union members walked off the job because McLain walked off the job. The record shows only that McLain quit and that thereafter others quit work. As is shown by the actions at the Pan Am job, the employees on their own without Union instigation, may quit or refuse to work when a non-union condition arises, (JA 175-179, 185-186). Can't we entertain the plausible explanation that the employees



learned of a non-union condition on their own and quit of their own volition? It certainly is not shown that McLain spoke to these employees. The General Counsel's witnesses clearly detail all of McLain's actions in July on that job. McLain's statement to Stack of his own personal feelings is not a statement of Union policy. As a matter of fact, Stack relates it as a personal position of McLain, (JA 132). No Union threat can be inferred from such a statement by a minor Union official engaging in a friendly discussion, with no Labor dispute present or on the horizon, when the said official clearly characterizes the statement as one that is his own personal position.

It is submitted, that for all of the arguments above there was no substantial evidence of violation at the Village Green Job.

**(b) The Miami Laundry job.**

At the Miami Laundry job, the sole legal question presented to the Court for review is whether or not the acts of the respondent's agent, Disney, constituted threats and coercion. An additional sidelight is the apparent inconsistency of the Board. For the same actions on the Miami Laundry job which the Board found only to be violative of 8(b)(4)(ii) of the Act, the Board found on the Publix job to be discussed hereafter, violations of both 8(b)(4)(i) and 8(b)(4)(ii).

Again, the threshold question for the Court is whether or not Disney, the Union steward, admittedly a Union agent, had foresworn his mantle of Union authority in discussing the issue with Stack, or whether or not he still acted as an agent of the Union, and whether the actions should have been recognized as such by Stack, and as a matter of fact by all reasonable men under such circumstances.

In the discussions with Disney, when Stack brought Dade Sound employees to the job, Stack was told by Disney that it was Disney's own personal view that he would not work with Dade Sound employees who were non-Union, (JA 209-210). Stack does not deny this. The Board found that this was Disney's personal feeling in the matter, (JA 71). Disney's statement on this occasion was as reported by MacMillan, the General Counsel's witness.

"And the statement made by the Steward was that they had fellow members of the union that could do that work and he felt that they could do it. . . ." (JA 150).

At this moment, Stack asked Disney, whether if the CWA (Dade Sound) men came on the job, would there be a work stoppage. Stack reports that Disney replied in the affirmative, (JA 125). Disney denies this version, (JA 209-211). Close examination of MacMillan's testimony and other witnesses produced by the General Counsel fails to corroborate Stack, although MacMillan admits being there and listening to the entire conversation. MacMillan does not report at any place in his conversation that Stack asked Disney about the work stoppage and that Disney replied that there would be one, (JA 150-151). However, admitting *arguendo*, for the purpose of this point, that the Trial Examiner's resolution of this credibility issue was proper, and the Board's adoption of the Trial Examiner's resolution was proper, still analysis of the entire incident would indicate that no threats or restraint or coercion were present. The events, if Stack's version is accepted, show primarily a systematic plan of entrapment. Disney did not volunteer that the men would stop working. Perhaps this would have been a threat that he would use his authority to cause such a stoppage. Prior to the vital question from Stack, Disney had indicated only how he had felt, not how the men, or

the Union viewed the matter. Disney's response to Stack's question, therefore, again examined in the same context, was a reply of what he thought would occur, not what would occur through his actions as a Union agent. If Disney had no intention of engaging in illegal activity, no intention of threatening Stack, no intention of causing a walkout, then it was Stack's invitation that resulted in the answer, an answer which we submit, Stack sought for the purpose of laying the responsibility to the Union. If Stack's version is to be credited, we can also assume that Stack, by this time quite sophisticated in the events that would take place, baited the unsuspecting Disney into making a statement that he would never have made had Stack not sought it out. An examination of MacMillan's testimony, (JA 149-151), shows that Disney was not a very communicative person. He attempted to avoid discussions of this matter.

Up to this time there is no question that Stack considered that Disney was acting as an individual. If he had any serious belief that Disney's statements were that of a Union, and represented Union policy and view, then why would he ask if there would be a work stoppage. Obviously, Disney had made it clear to Stack that he was speaking for himself. Under such circumstances, Disney's reply to Stack that the men would quit was again his own view of what the men would do, and not a threat to cause the men to quit, nor an indication that the Union would pursue such action. Certainly, Disney has the right although the steward on the job, to discard his agency and act as any individual employee and member of the labor union. **Tampa Sand & Material Co., supra; N.L.R.B. vs. P. R. Mallory & Co., supra.**

It is submitted that an inspection of the entire record on the Miami Laundry job leads to the conclusion: (1) that Disney was acting as an individual, and not as a Union agent while speaking to Stack and MacMillan; (2) that the

actions do not interpret as threats, coercion or restraint as defined in the Act.

(c) ~~(d)~~ **The Publix Markets job.**

The Publix Markets incident was strikingly similar to that of the Miami Laundry. Stack, MacMillan and Oliviera came to the job site in February 1963, after learning that MacMillan and Oliviera were scheduled to do the sound work. Stamp, the Union steward, approached Goldsmith, the superintendent of the general contractor on the job site, and informed him of his personal feelings, (JA 191-193). Throughout the conversations with Goldsmith, Stack and MacMillan, Stamp continuously insisted that his actions and views were individual, personal to him himself. Goldsmith decided to take the problem to Newsome and Stack. MacMillan, Stamp and Goldsmith went to Newsome, who was the chief Publix official at the job site; after repeating his personal position and views to Newsome, that he would not work with employees doing electrical work not referred through the Hall. At this point, the versions of what occurred differ somewhat. According to Stamp (neither Newsome nor Goldsmith, both independent witnesses, were produced by the General Counsel), he was asked if he would work with those people, and he said, no that he would not. He was then asked what about the other electricians. He replied:

"I have no idea what they will do." (JA 194)

On cross-examination, Stamp was asked whether or not the men would all go fishing. Stamp replied that Mr. Goldsmith said:

"... that if a man goes, or if that man goes, probably all the other electricians will go, they will get sick, they will start dropping like flies and then leave."

Mr. Newsome said:

"Is that so?"

And I said:

"That's right, as far as I know, it probably is, **but I don't know just exactly what they will do.**"  
(Emphasis supplied) (JA 196)

Clearly again Stamp was informing those persons with whom he spoke that the men would act on their own as individuals. Perhaps his choice of language was not perfect to convey with complete legal certainty that individual action of the men was what he foresaw. However, the net effect of this statement and the previous statements by Stamp leave no other conclusion. And so, earlier on direct examination, Stamp stated:

"... And Mr. Goldsmith explained the situation, and Mr. Newsome asked me if I would work with these people, and I said no, and, he said, well, how about the other electricians, and I said, I have no idea what they will do." (JA 194)

Obviously, both versions refer to the same incident. Obviously, Stamp is using free speech in describing what occurred and repeating the incidents as best he can from memory. Apparently, he was repeating the best sense of what he recalls occurred. In every version Stamp stated that he does not know exactly what the men will do.

The Board found this to be a threat and coercive. It is submitted that the action of Stamp was clearly individual action and he persisted in stating and repeating the singleness of his intentions.



Nor did Stamp volunteer this information about the other men quitting. Certainly, if it was Stamp's purpose to threaten the employer, he would have been the first to inform the general contractor and the owner of the property and Stack, the sub-contractor, what events would have transpired should he (Stack) insist on bringing Dade Sound to the job to do the sound work. The record indicates that Stamp never brought up the issue of other employees leaving, even though he had several conversations with Stack first, then with Goldsmith before they ventured to seek out Newsome. How was Stamp to know when speaking to Stack and Goldsmith that a conversation with Newsome would ever take place? Certainly, if it was his purpose to threaten, he would have dropped subtle or even stronger hints of the consequences resultant from permitting Dade Sound to work on the job. No, it was an accident, a mere quirk, an unintended event, resulting from the questioning of Stamp by the general contractor and the owner who pressed the point.

In these circumstances, what should a Union steward do? He did not volunteer the information. Should he continue to be silent under these circumstances? Should he lie? Stamp said only what you could expect from any honest and truthful person.

"I don't know what the men will do."

The threat, the coercion, the restraint, if any, were a product of the actions of the mental processes of Goldsmith and Newsome, and were not triggered by Stamp's actions, or statements.

Certainly again, Stamp had the right to act as an individual, if he made it clear that his actions were individual actions and not that of a Union steward, nor that his

actions were clothed with Union authority, and that his example was going to be followed by the other men. Otherwise, no union steward could ever act as an individual.

For some reason, the Board found a violation of 8(b)(4)(ii) in Stamp's refusal to work. No work stoppage actually occurred. Stamp never left the job site. No significant difference between the actions of Stamp at the Publix job and the actions of Disney on the Miami Laundry job is apparent to this writer. The Board's finding of such violation would seem indicative of the fact that the Board felt that the Union steward could not quit work, and if he did quit work, this would be Union action and constitute inducement and encouragement. This we submit is contrary to the law.

It is submitted that the record as a whole indicates that Stamp acted as an individual and that his actions do not constitute inducement and encouragement under 8(b)(4)(i) or threats, coercion and restraint under 8(b)(4)(ii) of the Act.

#### **(d) The Pan Am job.**

The Union agency is completely lacking at the Pan Am job. There was no Union steward at the job site, (JA 174, 184). No Union business agent was involved except on one occasion; as stated in the facts a few days after the first work stoppage, Harrison and several electricians went to the Hall where they met Albury. They told Albury of the dispute. Albury told the men that if they did not return to work, and if the employer called asking for other men he would have to replace them. Several days later the men reported for work at the job site. Albury participated only to the extent of completely disavowing any Union sanction and support for the actions of Harrison, Taylor or the rest of the electricians who were engaged in the work stoppage,

(JA 174,178,182,187). The only other Union business agent involved in any way with the Pan Am work was Apte who, when requested by Brush, Kammer's superintendent, sent a new crew of men to work at the Pan Am job, (JA 170-171). Indicative of the employer's approval of the actions of Harrison and the other electricians was Kammer's employment of the same crew at another job site, (JA 74). It is difficult to see how inducement or encouragement to strike can go on against an employer when the employer approves, cooperates or at least condones the action.

The instances in the preceding paragraph are the only occasions that a thorough examination of the record shows that any Union official, steward, business agent or employee, participated in the incidents arising at the Pan Am job, yet the Board found that the Union induced or encouraged its employees to engage in a strike under 8(b)(4)(i) of the Act, and by these actions threatened, coerced and restrained their employer under 8(b)(4)(ii) of the Act. Two members of the Board dissented. The basis for the majority decision is found in the following excerpt from the Board's order:

"Although there is no evidence that respondent made a direct appeal in this regard to its members at this site, the often voiced opposition of its agents to, and the example of its stewards and members striking in protest of, Dade's performance of sound work at other sites have the same effect." (JA 75)

The Board relies on **Local 28, Stereotypers' and Electrotypers' Union, (Capital Electrotpe Company, Inc.)**, 140 N.L.R.B. No. 49 (1963), as authority for their holding here. However, that case is quite distinguishable from the instant case. In that case, the Union notified the Regional Director

that it refused to comply with the Board's decision that the Union had no right to force a work assignment by means prescribed by 8(b)(4). In addition, the Union told the employer that its members would continue to refuse to do certain work until they were assigned the disputed work. Further, it was shown in that case that the Union controlled its members actions or subsequently ratified them. In that case, the Union through its agents admitted its purpose and predicted future work stoppages with the same object, and these statements of policy were made by agents who had the right to establish Union policy. This is not present in the instant case. In the instant case, we have Union stewards attempting to act as individuals on different occasions voicing their individual preferences not to work under non-union conditions. However, the Union itself through its elected officials involved, disavowed individual actions of the members is made clear. Additionally, the Union had taken a position of policy; it had posted in compliance with the settlement agreement and with the decree of enforcement in the Fifth Circuit Court of Appeals notice to all its members that it would not engage in activities with respect to Dade Sound & Controls which violated 8(b)(4)(i) and 8(b)(4)(ii) of the Act, (JA 214). This is a policy statement as clear and concise as one found in the By-Laws or the Constitution of the Union, or as any promulgated at a Union meeting regularly called, or by directive or order of the business agents or the executive board. At no time, after the agreement to cease and desist, and the posting did the Union, through its responsible agents, (those authorized to establish Union policy), take any position ratifying or consistent with the individual actions of its members.

The Board has also relied on *I.B.E.W., et al. (The Martin Company)*, 131 N.L.R.B. 1000 (JA 75) as authority for the position that the actions and examples of its stewards and members at other work sites had the effect of inducing and

encouraging the employees at Pan Am. In that case, the facts were clearly distinguishable from the facts in the instant case. In the first place, in that case the Union had adopted a policy of having the men refuse to install cables which were prefabricated and over which the Union claimed jurisdiction. This policy resulted in illegal work stoppages. These illegal actions were never remedied. The Union had never changed its policy by posting any notice that it no longer adhered to such illegal policy. As a matter of fact, it was the business agent himself who participated in the inducement of the men, who informed the men who were candidates for referral, that other men had been discharged for refusing to perform this work, who informed the men that the Union had a continuing dispute over this work, and who polled the men in the hiring hall as to whether or not they would accept employment to perform this work. We find no such participation in the instant case.

With respect to existing authority, both traditional and case law, the majority rule is contrary to the Board's decision. With respect to the action of members and stewards attempting to act as individuals, at other sites, no liability for violation of 8(b)(4)(i) and 8(b)(4)(ii)(B) at the Pan Am job can be predicated on their actions.

"There is no precedent for finding that the contemporaneous action of several small groups of union members, has happened in the instant case, alone suffices to impute to the union responsibility therefor." **Local 657, I.B.T.** 115 N.L.R.B. 981,998.

In **Kaiser Aluminum and Chemical Corp.**, 104 N.L.R.B. 873, at pages 876 and 877, the Board determined that the absence of a formal strike vote and the failure to actually call a strike indicated that any concerted action taken by members was not authorized by the Union and was their individual action.



And this Court discarded any such theory of Union or individual responsibility in **International Ladies' Garment Workers Union vs. N.L.R.B.**, *supra*, at page 552.

In **United States vs. International Union**, 89 Fed. Sup. 179, the Court said:

"It may be that the mass strike of union members has been ordered, encouraged, recommended, instituted, indirectly or so otherwise permitted by means not appearing in the record; but this court may not convict on conjectures, but can only act on the evidence before it, which is insufficient to support a finding of either criminal or civil contempt." Page 181.

The case of **Building and Construction Trades Council of Tampa, AFL-CIO, et al. and Tampa Sand and Material Co.**, 132 N.L.R.B. No. 124 (1961) is a case that appears so diametrically opposed to the instant case that it is difficult to understand how the Board could have acted in this wise in the face of the previous decision. With an existing background of a labor dispute against Tampa Sand Company, walkouts and work stoppages occurred at three different sites. Yet, the Board did not find violations at all of these sites in spite of finding certain facts excerpted from the following statement from the Board's opinion.

"... although the issue is not free from doubt, we think the evidence does not establish that (laborers' steward) Knight was the instigator of the work stoppage at (the third job) ... we find the mere statement that Knight 'circulated around' before the stoppage insufficient to support inference of inducement, particularly where, as here, there is evidence that the rank and file were un-

willing to handle Cone products. Since there is no other evidence from which inducement or encouragement by the steward may reasonably be inferred, we find no violation".

And later —

"...to hold that a steward may not walk off the job because of his own unwillingness to handle non-union products without fixing a responsibility for an unfair labor practice upon his union is to foreclose the steward, simply by reason of his office, from all individual freedom of action. We find nothing in the statute which, even impliedly, justifies placing such a restraint upon the conduct of stewards, or such a risk of guilt by inference upon labor organizations. Accordingly, we do not find that the conduct of Edwards on June 30th constituted a violation of the Act on the part of respondent carpenters".

It is difficult to understand the reasoning and record evidence supporting the Board's statement in its opinion that there was an often voiced opposition of its agent to Dade's performance of sound work at other sites. The only instance where such opposition was voiced was the incident of the previous year, where the Union had admitted its guilt and signed a settlement agreement and agreed to the enforcement of the settlement agreement by a Court decree. Thereafter, it had posted a notice to its members, (JA 193,214). No other opposition was voiced by any responsible Union official. In addition, there is no indication that any of the acts of the Union stewards at other sites became known to Harrison, Taylor or the electricians at the Pan Am job. There is no reason to assume that they would learn of this. The Union did not always learn of work stoppages,

(JA 170). These other incidents were minor incidents where a work stoppage of only one or two days occurred by small groups of men on separate occasions, not near in time to each other. The other incidents described in the testimony were incidents where no work stoppages occurred. It is then reasonable to assume that the employees at the Pan Am job learned of these occurrences? What is reasonable to assume is that they read and saw the notice posted in the Union hall, which notice was posted pursuant to the Board's order and the decree that it requested.

It is submitted that without any agency there can be no Union liability or responsibility. As the Board has admitted in its decision, there were no direct appeals made in this regard — no violation of 8(b)(4)(i) or 8(b)(4)(ii)(B) should have been found, and there is no substantial evidence of violation at Pan Am.

#### **A. THE BOARD'S TREATMENT OF THE TRIAL EXAMINER'S REPORT.**

The Board reviewed the rulings of the Trial Examiner and found that no prejudicial error was committed. The rulings were affirmed. The Union had accepted the findings of the Trial Examiner and challenged them when it sought review before the Board. A significant number of the exceptions dealt with failure of the Trial Examiner to reject testimony of statements of foremen and other Union members and the consideration by the Trial Examiner of these statements in resolving credibility, drawing inferences and findings of fact, (JA 64). An examination of the Trial Examiner's report shows reference therein to the statements of Foreman Logan on the Village Green job, (JA 11-16), Browning on the Publix National job, (JA 27,39), Lashauer on the Lincoln National job, (JA 20-26,44-45,47,49-50), and Harrison and Taylor on the Pan Am job, (JA 39-40,50). The Trial

Examiner received the testimony of witnesses reporting statements made by foremen or union members outside of the presence of any Union official or agent including the stewards. Objection was made at the hearing to the offered testimony, which objections were overruled and the testimony received, (JA 111,130,141,164). The Trial Examiner received and considered the statements of the witnesses on each job and made resolutions of credibility and findings of fact just as though these statements were binding on the labor union. This was error and the Union maintains prejudicial error. The statements of foremen and Union members when these foremen or members are not officers or agents or employees of the Union, and when their statements or actions are not instigated or controlled by the Union, are not binding on the Union, are not properly received in evidence, are hearsay, and should not be considered.

Throughout the Trial Examiner's report at each job site, the statements of Union foremen and members played a crucial part in the fact finding processes engaged in by the Trial Examiner. It is impossible to know what his findings of fact would have been had he rejected the hearsay testimony offered with respect to these statements and considered only the legitimate permissible testimony under accepted legal principles. It is to be recalled that the General Counsel in his Complaint relied heavily on the legal position that the Union foreman acted in a dual capacity, that is, they were agents of the employer and agents of the Union at the same time, (JA 83-89). Although the Board declined to follow this legal theory, it is significant that the General Counsel based the major portion of his case, as set forth in his Complaint, on such theory. When the Board rejected this theory, it should have rejected all of the General Counsel's case as alleged in the Complaint, which was based on this theory, and should have dismissed those portions of

the Complaint. The Board itself considered some of these statements, (JA 74). It is further submitted that this is prejudicial error and the entire Trial Examiner's report should have been rejected and the case dismissed.

#### **B. THE TRIAL EXAMINER'S THEORY OF UNION RESPONSIBILITY.**

The Trial Examiner concluded, as a matter of law, that the Union had violated Sections 8(b)(4)(i) and 8(b)(4)(ii)(B) and had induced its members to engage in strikes or refusals to work by acquiescing in, tolerating, failing to take effective measures to prevent and ratifying a code of conduct by its members not to work with people regarded as non-union, (JA 50-52). The Board rejected this theory and reasoning indulged in by the Trial Examiner. The Board made independent findings and conclusions of law with respect to each job site. However, in doing so the Board relied on the Trial Examiner's findings of fact, resolutions of credibility, and drawing of inferences. The Union contends that the Trial Examiner indulged himself in a philosophy foreign both to Board and case law. The theory of liability which was so inconsistent and opposite to existing legal principles (See *International Ladies' Garment Workers Union vs. N.L.R.B.*, *supra*) was an approach to the subject which had precluded reasonable inquiry into the subject matter, that the Board should have discarded all of his findings and made independent evaluations of the testimony or else dismissed the entire Complaint. The following is a delineation of the improper judicial activities engaged in by the Trial Examiner:

1. He departed from the record in finding facts by considering the Union's By-Laws and Constitution not introduced into evidence, (JA 34).



2. He regularly and consistently permitted hearsay testimony into the record by permitting witnesses to testify of statements made by Foremen and members outside of the presence of Union officials. He used improper and illogical analogies in his reasoning, (JA 10,48-49).

3. He failed to give proper weight and consider valid evidence that would impeach witnesses that were necessary to the General Counsel's case under the Trial Examiner's theory, (JA 19,29).

4. He refused to accept uncontradicted, reasonable, logical, testimony of Union witnesses and to credit the same, (JA 34,36,39,47). He attempted to introduce a new philosophy, a complete departure from existing law, which would require the Union to act contrary to its own interests, (JA 42-45,47-48).

This is not the common situation where the sole complaint against the Trial Examiner is that he resolved all issues against a respondent. This, too, is present, but so integrated with other radical approaches, indicates an inquiry where the Union could not possibly have received fair consideration.

For these grounds, too, the Union submits that no violation should be found of 8(b)(4)(i) or 8(b)(4)(ii)(B).

## CONCLUSION

The Union submits that the Board erred for the reasons given heretofore and prays that the Board's order be modified, the case dismissed, and enforcement denied.

RESPECTFULLY SUBMITTED,

KASTENBAUM, MAMBER, GOPMAN,  
EPSTEIN & MILES

Attorneys for Petitioner

By: SEYMOUR A. GOPMAN

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SEYMOUR A. GOPMAN, Of Counsel

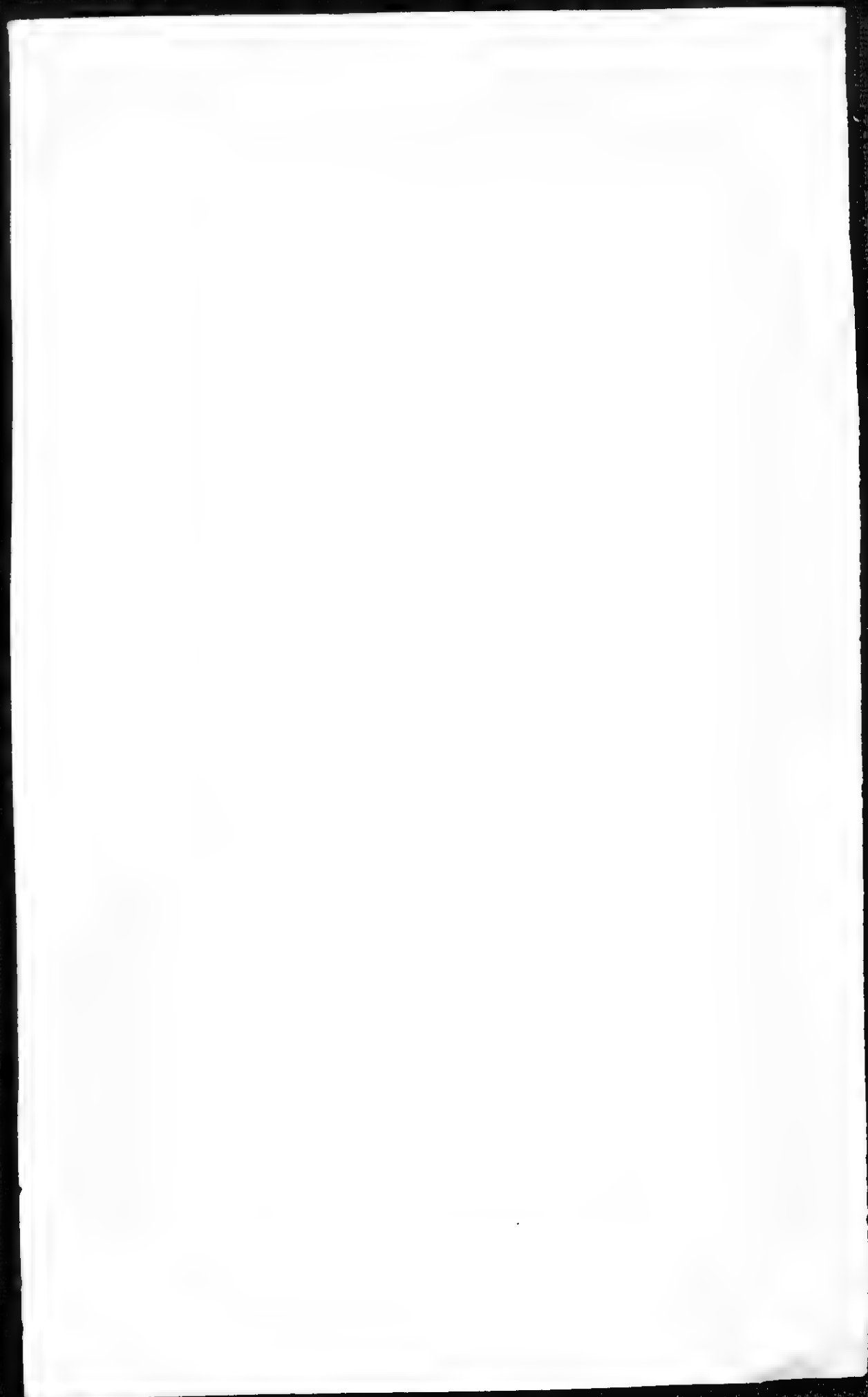
## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Brief for Petitioner has been furnished by mail, this 27th day of May, 1965, to:

National Labor Relations Board  
Washington 25, D.C.

Dade Sound and Controls  
240 Palermo  
Coral Gables, Fla.

(Signed) SEYMOUR A. GOPMAN



No. 19,146

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

LOCAL 349, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

---

On Petition to Review and on Cross-Petition for  
Enforcement of an Order of the National Labor  
Relations Board

---

BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD

---

United States Court of Appeals  
for the District of Columbia Circuit

FILED JUN 25 1965

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## STATEMENT OF QUESTIONS PRESENTED

The issues stipulated between the parties, as approved in the prehearing order of this Court, and contained at pages 1-2 of the Joint Appendix are as follows:<sup>1</sup>

1. Whether the Board properly found that Petitioner violated Section 8(b)(4)(i)(ii)(B) of the Act by inducing work stoppages of its members on the Village Green Crown Lanes Job, the Miami Laundry Job, the Publix Warehouse Job, and the Pan American Hospital Job.
2. Whether the Board's order is valid and proper.

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<sup>1</sup> The questions presented by petitioner (Br. 1-2) are not in accord with the prehearing stipulation.



### III

## INDEX

	Page
Statement of questions presented .....	1
Counterstatement of the case .....	1
I. The Board's findings of fact .....	2
A. Background—the dispute between petitioner and CWA about the installation of sound amplification equipment .....	3
B. The unfair labor practices—The Union strikes or threatens strikes at four construction jobs in order to have Dade employees replaced by its own members .....	6
1. The Village Green Crown Lanes Job ....	6
2. The Miami Laundry Job .....	6
3. The Publix Warehouse Job .....	8
4. The Pan American Hospital Job .....	10
II. The Board's conclusions and order .....	12
Summary of argument .....	14
Argument .....	18
I. The Board properly found that the Union violated Section 8(b) (4) (i) and (ii) (B) by threatening Secondary Employers with work stoppages on four building sites .....	18
A. Introduction .....	18
B. Petitioner's activities resulting in the ouster of Dade from construction projects prior to the commission of the unfair labor practices .....	19
C. Petitioner violated Section 8(b) (4) (i) (ii) (B) by causing work stoppages and threatening other work stoppages on four construction projects.....	21
1. Strikes caused or threatened by petitioner's job stewards .....	21

# IV

Argument—Continued	Page
2. Petitioner's responsibility for the actions of its job stewards .....	25
3. The responsibility of petitioner for the work stoppages at the Pan American Hospital Job .....	33
II. The Board's order is valid and proper .....	39
Conclusion .....	41

## AUTHORITIES CITED

### Cases:

<i>Amalgamated Meat Cutters</i> , 81 NLRB 1052.....	36
<i>Bakery Wagon Drivers v. N.L.R.B.</i> , 116 App. D.C. 87, 321 F. 2d 353 .....	40
<i>Berger v. United States</i> , 255 U.S. 22 .....	14
<i>Harold Boire R/D, etc. v. Local 349, Int'l Bro. of Elec. Workers, AFL-CIO</i> , Civ. No. 63-115-CIV-DD (unreported) .....	12
<i>Bldg. &amp; Constr. Trades Council of Tampa</i> , 132 NLRB 1564 .....	20, 31, 36, 38
<i>Central States Drivers Council v. N.L.R.B.</i> , 105 App. D.C. 338, 267 F. 2d 166, cert. den., 361 U.S. 833 .....	40
<i>Chauffeurs, Teamsters &amp; Helpers Local 175</i> , 128 NLRB 522, enfd., on this point, 111 App. D.C. 65, 294 F. 2d 261 .....	24-25
<i>Cuyahoga, etc. Carpenters Dist. Council</i> , 143 NLRB 872, enfd., 338 F. 2d 958 (C.A. 6) .....	20, 28
<i>Fibreboard Corp. v. N.L.R.B.</i> , 379 U.S. 203 affg., 116 App. D.C. 198, 322 F. 2d 411 .....	40
<i>I.B.E.W. v. N.L.R.B.</i> , 341 U.S. 694 .....	17, 34, 40
<i>Int'l Ladies' Garment Workers v. N.L.R.B.</i> , 99 App. D.C. 64, 237 F. 2d 545 .....	28
<i>Int'l Longshoremen's, etc. Union</i> , 79 NLRB 1487 ....	27
<i>Int'l Union, United Auto, etc. v. N.L.R.B.</i> , — App. D.C. —, 344 F. 2d 171 .....	14
<i>Joliet Contractors Ass'n v. N.L.R.B.</i> , 202 F. 2d 606 (C.A. 7), cert. den., 346 U.S. 824 .....	35

\* Authorities chiefly relied upon.

## Cases—Continued

## Page

<i>Joy Silk Mills, Inc. v. N.L.R.B.</i> , 87 App. D.C. 360, 185 F. 2d 732, cert. den., 341 U.S. 914 .....	34
<i>Kaiser Aluminum &amp; Chemical Corp.</i> , 104 NLRB 873 .....	37
<i>Local 3, Int'l Bro. of Elec. Workers</i> , 140 NLRB 729, enfd., 325 F. 2d 561 (C.A. 2) .....	17, 22, 35
<i>Local 3, Int'l Bro. of Elec. Workers</i> , 141 NLRB 888 .....	35
* <i>Local No. 5, United Ass'n Plumbers, etc. v.</i> <i>N.L.R.B.</i> , 116 App. D.C. 100, 321 F. 2d 366, cert. den., 375 U.S. 921 .....	18, 23, 40
<i>Local 28, Int'l Stereotypers, etc. Union</i> , 140 NLRB 480 .....	35
<i>Local 84, Int'l Ass'n of Bridge, etc. Workers</i> , 129 NLRB 971 .....	32
<i>Local Union 522, Lumber Drivers</i> , 126 NLRB 297, enfd., 281 F. 2d 952 (C.A. 3) .....	27
<i>Local 657, Int'l Bro. of Teamsters</i> , 115 NLRB 981 .....	37
<i>Local 756, Int'l Bro. of Elec. Workers</i> , 131 NLRB 1010 .....	35
<i>Local 760, Int'l Bro. of Elec. Workers</i> , 82 NLRB 696 .....	36
<i>Local 761, Int'l Union of Elec. Workers</i> , 126 NLRB 123, enfd., 287 F. 2d 565 (C.A. 6) .....	28
* <i>Local 761, Int'l Union of Elec., Radio &amp; Machine</i> <i>Workers v. N.L.R.B.</i> , 366 U.S. 667 .....	18
<i>Local 833, Int'l Union, etc. v. N.L.R.B.</i> , 112 App. D.C. 107, 300 F. 2d 699, cert. den., 370 U.S. 911..	15, 21
* <i>Local Lodge 1424, etc. v. N.L.R.B.</i> , 362 U.S. 411 ....	15, 21
* <i>Los Angeles Mailers Union No. 9 v. N.L.R.B.</i> , 114 App. D.C. 72, 311 F. 2d 121 .....	13-14, 16, 25
<i>The Lummus Co. v. N.L.R.B.</i> , — App. D.C. —, 339 F. 2d 728 .....	20-21
<i>Miami Newspaper Pressmen's Local 46 v.</i> <i>N.L.R.B.</i> , 116 App. D.C. 192, 322 F. 2d 405 ....	18, 23, 34
* <i>N.L.R.B. v. Brewery &amp; Beer Dist. Drivers, etc.</i> , 281 F. 2d 319 (C.A. 3) .....	16, 27, 29

---

\* Authorities chiefly relied upon.

## Cases—Continued

## Page

<i>N.L.R.B. v. Chauffeurs, Teamsters &amp; Helpers, Local 364</i> , 274 F. 2d 19 (C.A. 7) .....	28
<i>N.L.R.B. v. Craig-Botetourt Elec. Co-op.</i> , 337 F. 2d 374 (C.A. 4) .....	21
<i>N.L.R.B. v. Cuyahoga, etc. Carpenters Dist. Council</i> , 338 F. 2d 958 (C.A. 6) .....	28
<i>N.L.R.B. v. Donnelly Garment Co.</i> , 330 U.S. 219 ..	14
* <i>N.L.R.B. v. Express Pub. Co.</i> , 312 U.S. 426 .....	40
<i>N.L.R.B. v. Fitzgerald Mills Corp.</i> , 313 F. 2d 260 (C.A. 2), cert. den., 375 U.S. 834 .....	21
<i>N.L.R.B. v. Highway Truckdrivers &amp; Helpers, Local 107</i> , 300 F. 2d 317 (C.A. 3) .....	40
<i>N.L.R.B. v. Int'l Hod Carriers, Local 1140</i> , 285 F. 2d 397 (C.A. 8), cert. den., 366 U.S. 903 .....	40
<i>N.L.R.B. v. Int'l Bro. of Boilermakers, etc.</i> , 321 F. 2d 807 (C.A. 8) .....	27, 28, 32
<i>N.L.R.B. v. Int'l Bro. of Teamsters, Local 182</i> , 228 F. 2d 83 (C.A. 2) .....	28
<i>N.L.R.B. v. Int'l Bro. of Teamsters, Local 249</i> , 249 F. 2d 292 (C.A. 3) .....	28
<i>N.L.R.B. v. Int'l Longshoremen's, etc. Union</i> , 283 F. 2d 558 (C.A. 9) .....	27
<i>N.L.R.B. v. Local 3, I.B.E.W.</i> , 325 F. 2d 561 (C.A. 2), enfg. 140 NLRB 729 .....	20, 40
* <i>N.L.R.B. v. Local 135, Int'l Bro. of Teamsters</i> , 267 F. 2d 870 (C.A. 7), cert. den., 361 U.S. 914 ....	16, 22, 29
<i>N.L.R.B. v. Local 138, Operating Engineers</i> , 293 F. 2d 187 (C.A. 2) .....	27, 32
<i>N.L.R.B. v. Local 294, Int'l Bro. of Teamsters</i> , 284 F. 2d 887 (C.A. 2) .....	34
<i>N.L.R.B. v. Local 751, United Bro. of Carpenters</i> , 285 F. 2d 633 (C.A. 9) .....	35
<i>N.L.R.B. v. Local 815, Int'l Bro. of Teamsters</i> , 290 F. 2d 99 (C.A. 2) .....	16, 20, 26-27, 32
<i>N.L.R.B. v. P. R. Mallory &amp; Co.</i> , 237 F. 2d 437 (C.A. 7) .....	29
<i>N.L.R.B. v. Shen-Valley Meat Packers</i> , 211 F. 2d 289 (C.A. 4) .....	30

---

\* Authorities chiefly relied upon.

# VII

## Cases—Continued

	Page
<i>N.L.R.B. v. Stackpole Carbon Co.</i> , 105 F. 2d 167 (C.A. 3), cert. den., 308 U.S. 605 .....	14
<i>N.L.R.B. v. Walton Mfg. Co.</i> , 369 U.S. 404 .....	34
<i>Nat'l Maritime Union v. N.L.R.B.</i> , — App. D.C. —, — F. 2d —, 58 LRRM 2827 (No. 18,789, decided April 15, 1965) .....	18
<i>News Printing Co. v. N.L.R.B.</i> , 98 App. D.C. 14, 231 F. 2d 767, cert. den., 352 U.S. 845 .....	34
<i>New York Mailers' Union No. 6, etc. v. N.L.R.B.</i> , 114 App. D.C. 370, 316 F. 2d 371 .....	16, 23
<i>Poinsett Lumber Co.</i> , 107 NLRB 234 .....	31-32
<i>Reynolds v. Local 1522, Lumber Drivers</i> , 43 LRRM 2001, 35 CCH L.C. Par. 71,906 (D.C. N.J.—not officially reported) .....	30
<i>Superior Engraving Co. v. N.L.R.B.</i> , 183 F. 2d 783 (C.A. 7), cert. den., 340 U.S. 930 .....	30
<i>Truck Drivers &amp; Helpers Local No. 728 v. N.L.R.B.</i> , 265 F. 2d 439 (C.A. 5), cert. den., 361 U.S. 917 .....	28, 34
* <i>Truck Drivers &amp; Helpers Local Union No. 728 v. N.L.R.B.</i> , 332 F. 2d 693 (C.A. 5), cert. den., 379 U.S. 913 .....	27
<i>United Bro. of Carpenters</i> , 100 NLRB 753, enfd., 205 F. 2d 515 (C.A. 10) .....	28
<i>United Furniture Workers of America v. N.L.R.B.</i> , 118 App. D.C. 350, 366 F. 2d 738, cert. den., 379 U.S. 838 .....	14
<i>United States v. Bro. of Railroad Trainmen</i> , 96 F. Supp. 428 (D.C. N.D. Ill.) .....	36
* <i>United States v. Int'l Union of United Mine Work- ers</i> , 77 F. Supp. 563, affd., 85 App. D.C. 149, 177 F. 2d 29, cert. den., 338 U.S. 871 .....	17, 36
<i>United States v. Int'l Union of United Mine Work- ers</i> , 89 F. Supp. 179 (D.C. D.C.), appeal dis- missed as moot, 88 App. D.C. 341, 190 F. 2d 865 .....	37-38
<i>Universal Camera Corp. v. N.L.R.B.</i> , 340 U.S. 474 .....	14

\* Authorities chiefly relied upon.



# VIII

Statute:	Page
National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, <i>et seq.</i> ) .....	2
Section 2(13) .....	31
Section 8(b) (4) .....	3, 13, 18, 28, 37
Section 8(b) (4) (i) (B) .....	2, 18, 21
Section 8(b) (4) (ii) (B) .....	2, 18, 21
Section 8(b) (4) (B) .....	14, 18
Section 10(b) .....	21
Section 10(c) .....	2
Section 10(e) .....	2
Section 10(f) .....	2
Miscellaneous:	
Restatement, Agency, 2d ed., Sec. 161 .....	27
<i>Settling Plant Grievances</i> , U.S. Dept. of Labor, Div. of Labor Standards, Bulletin No. 60, G.P.O. 1944, p. 32 .....	28

IN THE  
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---

On Petition to Review and on Cross-Petition for  
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Relations Board

---

BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD

---

COUNTERSTATEMENT OF THE CASE

This case is before the Court upon a petition by Local 349, International Brotherhood of Electrical Workers, AFL-CIO ("the Union") to review and set aside an order of the Board issued on November 4, 1964, following the usual proceedings under Section

10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*). In its answer to the petition the Board has requested enforcement of its order. The Board's decision and order are reported at 149 NLRB No. 46 (J.A. 3-56, 65-81).<sup>2</sup> This Court has jurisdiction under Section 10(e) and (f) of the Act.

### **I. The Board's Findings of Fact**

Briefly stated, the Board found that petitioner violated Section 8(b)(4)(i) and (ii)(B) of the Act by inducing and encouraging employees of various electrical contractors and subcontractors in the Miami, Florida, area to engage in work stoppages or refusals to perform services, thereby threatening and coercing such contractors and subcontractors with an object of forcing or requiring them to cease doing business with Dade Sound and Controls (herein referred to as "Dade"). The Board also found that the underlying reason for petitioner's action was the fact that Dade's employees are members of another labor organization and that petitioner claimed that the work performed by them should be done by petitioner's members. The evidence upon which these findings are based is summarized below.

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<sup>2</sup> References are to the Joint Appendix. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence. Occasional references to the typewritten transcript, and to the exhibits introduced before the Board by the General Counsel are designated "Tr." and "G.C. Exh.", respectively.

A. *Background—the dispute between petitioner and CWA about the installation of sound amplification equipment*

Dade is a contractor for the installation of sound amplification equipment and does business in the Miami, Florida, area (J.A. 3, 65). It is a small enterprise with two employees, MacMillan and Oliveira (J.A. 3, 65-66; 213). In December 1961, Dade signed a collective bargaining agreement with Local 3107 of the Communication Workers of America, AFL-CIO (herein called CWA), and its employees became members of that labor organization (J.A. 65-66; 145-146, 166, 211-213). Petitioner claims to have jurisdiction over the installation work performed by Dade and the assignment of such work has been the subject of a dispute between petitioner and CWA for some time (J.A. 66; 182-183, 194-195).

Sometime in May 1962, while Dade was installing sound equipment at a site, MacMillan informed Finn, a CWA official, that he was having trouble with petitioner because he was working on a job where petitioner's members were also employed (J.A. 8, 66; 212-213, see 171-172). Finn thereupon talked to Apte, a business agent for petitioner, about CWA members working alongside petitioner's members and Apte told him that if Finn did not remove the CWA members, Apte's men "would be walking" (*ibid.*). During the same month, Dade filed a charge with the Board that petitioner had violated Section 8(b)(4), and the Regional Director issued a complaint alleging that petitioner had violated that provision by threatening Miller Electric at its Miami University Library

building project, and had induced employees of Miller to strike in order to force Miller to cease doing business with Dade. On August 9, 1962, Dade, the General Counsel and petitioner entered into a settlement stipulation providing for a cease and desist order based on the allegations of that complaint. The Board entered such order on September 5, and the Court of Appeals for the Fifth Circuit entered a decree on October 17, 1962, enforcing the Board's order. (J.A. 66; 90-94, 152).

During the summer of 1962, Village Green Crown Lanes contracted for the construction of a number of bowling alleys. A contract was entered into with J. M. Coker, Inc., to install a paging and intercommunications system, and Coker subcontracted some of this work to Dade. The general contractor (Flink) employed Burns & Yeager (Burns) as subcontractor to perform the electrical work for the same construction job, and Burns' electricians, including Foreman Logan, were members of petitioner. (J.A. 10, 67-68; 100-101, 115-117, 145). Statcavage, Coker's representative and Dade's employee MacMillan went to the construction site on July 27, 1962, where they were confronted by McLain, petitioner's steward on the job (J.A. 10-11, 68; 117-118, 198-199). When McLain was informed that MacMillan was a CWA member, he told Statcavage that MacMillan "just can't work out" (J.A. 11-12, 68; 118-119, 145-146). At Statcavage's request to check the matter further, McLain went to a telephone, apparently made a call, hung up and returned (J.A. 12, 68; 118-120). Statcavage asked McLain what the "scoop was," and Mc-



Lain replied, "You'll find out" (J.A. 12, 68; 119-120, 146-147). Shortly thereafter, McLain, Foreman Logan and all the electricians, members of petitioner, walked off the job prior to closing time, and without authorization by Burns (J.A. 12-13, 68-69; 112-113, 147). Steward McLain admitted at the hearing that his action in quitting work on that day resulted from the fact that Burns had not been assigned the installation work, which was done by Dade. He also admitted that he had met MacMillan at the Miami University Library construction project in the spring of 1962 (*supra*), and had walked off that site when he learned that MacMillan was a member of the CWA, the members of which he considered to be "non-union" employees. (J.A. 13-16, 68; 191-203, 205).

On July 28, 1962, McLain stayed away from the construction site, and instead got in touch with petitioner's hall (J.A. 14, 68-69; 201). He was told by Business Agent Albury that his continued absence from the job might result in his replacement, whereupon he decided to return to work (*ibid.* and J.A. 180-181). On his way back to the construction site, he passed a restaurant where four or five of the electricians employed at the project were eating (J.A. 15, 68-69; 202, tr. 470). After he told them that he was returning to the project, they also decided to return (*ibid.*). Because of the difficulty caused by this walkout, Statcavage, on behalf of Coker, took away the installation work from Dade and awarded it to Burns (J.A. 12-13, 68-69; 120, 132). Early in August, McLain again spoke to Statcavage, and said that walking off the job rather than working with

"non-union" employees was a personal matter with him but that if he did, the other men would "just follow suit" (*ibid.*).

**B. *The unfair labor practices—The Union strikes or threatens strikes at four construction jobs in order to have Dade employees replaced by its own members***

**1. *The Village Green Crown Lanes Job***

Subsequent to the July stoppage (*supra*, p. 5), Statcavage again awarded the work of installing the internal communications system to Dade because the cost of having it performed by Burns was higher than anticipated (J.A. 13, 69; 121). Shortly before noon, on September 13, 1962, Statcavage and the Dade employees, MacMillan and Oliveria, arrived on the site (J.A. 13, 69; 122, 148). Burns' foreman, Logan, approached Statcavage and asked whether MacMillan and Oliveira were to perform sound work (J.A. 13, 69; 122). When Statcavage replied in the affirmative, Logan said "Well I have to leave because I have two strikes against me now and I can't afford anything like this" (*ibid.*). After lunch, all of the electricians, members of the Union, including the Union's steward, McLain, and Foreman Logan, walked off the site, and remained away for the balance of the day and all of the next day (J.A. 13, 69; 113; 148, 202-203).

**2. *The Miami Laundry Job***

During September 1962, M. R. Harrison, as general contractor, did construction work (renovation

and additions) for Miami Laundry and Dry Cleaning Co. (J.A. 4, 17, 71; 101, 116). R. L. O'Donovan was the electrical subcontractor at the site, and his employees were members of petitioner (J.A. 4-17, 71; 101-102, 209, 211). Petitioner appointed Disney as its steward on the job (*ibid.*). Miami Laundry gave a subcontract to install sound and communication facilities, to Coker, and the latter subcontracted the labor for this work to Dade (J.A. 4, 17, 71; 122, 148).<sup>3</sup>

In late September, Statcavage, Coker's representative, and MacMillan, Dade's employee, came to the site and spoke to Diaz, O'Donovan's foreman and a member of the Union, and to Disney. Statcavage said he would like to have Dade perform the installation of the sound equipment on the job, and Diaz replied that the electricians would discuss this among themselves and would let Statcavage know whether Dade could make the installation (J.A. 17; 124-125, 148-149, 205-206). Diaz laughed when Statcavage told him that he would have no problem about working with MacMillan because the latter had a CWA card. Diaz testified that he thought that MacMillan "was pulling my leg" (J.A. 19; 206-207). About a week later, Statcavage and MacMillan again talked at the job site with Diaz and Disney. Disney, who had checked MacMillan's card and established that he was a CWA member, told Statcavage in the presence of Diaz that he, Disney, could not work with Dade; that

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<sup>3</sup> The entire construction and renovation job lasted from February 1962 to March 1963 (J.A. 10).

the Union had its own people who could do the sound work; and that if MacMillan came on the job there would be a work stoppage (J.A. 17-18, 71; 125, 135-137, 150-151, 209-210). During the conversation, Fonda, a member of petitioner, who had experience on sound installations, reported to Diaz that he had arrived on the site, and that another man experienced in such work was on his way from the union hall (J.A. 38; 150-151, 208, 210-211). Later that day, Statcavage reassigned Dade's sound installation work to O'Donovan (J.A. 71; 125, 138, 152).

### 3. *The Publix Warehouse Job*

Publix Markets, Inc., was having a warehouse built in February 1963. It assigned the sound and communication work to J. M. Coker, Inc., which subcontracted the installation work on its contract to Dade. Kammer & Wood (Kammer), which employed members of petitioner was the electrical subcontractor (J.A. 4, 72; 106, 115-116, 152).

Statcavage and the two employees of Dade, Oliveira and MacMillan, went to the job site on February 4 to check the location of the equipment and perform other preparatory tasks (J.A. 27, 72; 126). At that time, approximately 30 electricians, members of petitioner, were working at the site for Kammer (J.A. 28; 195). Stamp, petitioner's shop steward for Kammer approached MacMillan and Oliveira, and demanded to see their union cards. After Stamp noticed that their cards were issued by CWA he walked away and sought out Goldsmith, Publix construction superintendent. (J.A. 27, 72; 126-128, 133-134, 152-153, 162,

191). Stamp told Goldsmith that CWA men were doing the sound work on the job; that he thought that that work should be done by IBEW members, and that he would not work with CWA men. In a later conversation the same day, in the presence of Stack and Oliveira, Stamp repeated that if the CWA men came on the job he would have to leave. Browning, the job foreman for Kammer, and a member of petitioner, was with Goldsmith at that time and said he would also leave. (J.A. 27, 72; 127-128, 153-154, 162-164, 166-167, 191-193). Statcavage, MacMillan, Stamp, and Goldsmith then looked up Newsom, the chief Publix official on the job site. Stamp told Newsom that petitioner had unemployed members who could and should do the work. He added that his feelings were personal and that he would not work with anyone not referred through the union hall (J.A. 28, 72; 127-129, 133-134, 154). Goldsmith then observed: "If that man [goes] all the other electricians will go; they will get sick; they will start dropping like flies and then leave" (J.A. 28, 72; 196). Newsom then turned to Stamp and asked him if Goldsmith was right, to which Stamp replied: "That's right, as far as I know, it probably is, but I don't know exactly what they will do" (*ibid.*). Thereafter, Dade was not allowed to perform the sound work on the job, which was given to Dick Williams Sound, Inc., a firm which employed members of petitioner (J.A. 28, 72; 195, 197).



#### 4. *The Pan American Hospital Job*

In the early part of 1963, the Pan American Hospital constructed a hospital building. The electrical subcontractor was Kammer, which, as previously indicated, employed members of the Union. Pan American gave the work of installing a nurses' call system and related work to Coker, and Coker, in turn, contracted with Dade to have that firm perform the labor needed for the installation. (J.A. 4, 28, 73; 19, 102-103, 106-107, 115-116, 129, 140, 155). Sullivan, an electrical engineer, did electrical work "on the redesign" and in order to supervise such work generally went to the building site. He became aware of the fact that Dade was going to perform the sound work on the job from time to time. Sometime in January 1963, he spoke to Harrison, the electrical foreman of Kammer (a member of the Union), and asked him whether or not he was going to walk off the job when the CWA men appeared. Harrison replied that he had been told not to work with them (J.A. 28-29, 39; 140, 173, tr. 237-238).

On February 6, 1963, Dade's employees, MacMillan and Oliveira, came to the job site (J.A. 29, 73; 129, 164). Taylor, a journeyman electrician and a member of petitioner confronted them and asked to see their union cards, in the same manner as petitioner's job stewards or members had done on other occasions (J.A. 29, 30, 73-74; 164, 184-186). After learning that MacMillan and Oliveira were CWA members, Taylor went to Foreman Harrison, who was speaking with Statcavage, and told him in the latter's pres-

ence that "they" were on the job; that "we" do not recognize their jurisdiction, and that "we" had better check (J.A. 30-31, 74; 130, 141, see 185-186). Harrison left Statcavage and called the union hall. He returned and stated that he was unable to reach anyone (J.A. 31, 74; 130, 176, 179-180). Harrison, on this occasion, also personally checked the union cards of MacMillan and Oliveira (J.A. 30; 158, 176). After lunch, all of the electricians on the job, including Foreman Harrison, left and stayed away from the job for the remainder of the workweek (J.A. 31, 74; 103-105, 138-139, 177, G.C. Exh. 5).<sup>4</sup> Harrison and some of the other electricians went to the union hall on February 7, and reported to Business Agent Albury what had happened the preceding day. Albury told them to go back to work, but none did so until the following Monday, February 11 (J.A. 32, 74; 178-179, 186-188).

MacMillan and Oliveira returned to this job on Tuesday, February 19, and again all electricians, members of the union walked off (J.A. 32, 74; 107-108, 156, 188-189; G.C. Exh. 6). Thereafter, Statcavage and Sullivan entered into an agreement with Brush, Kammer's job superintendent, that the Dade employees would work on evenings and weekends and the electricians would work during the day (J.A. 33, 74; 142, 157). However, on Monday, March 4, Mac-

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<sup>4</sup> There were about eight electricians on the job on February 6, a Wednesday, each of whom was credited with 6 hours work for that day on the employer's records and with none for Thursday and Friday (J.A. 31-32; 107, 178, G.C. Exh. 5).

Millan and Oliveira came to work during the day and worked most of that week. All of the IBEW electricians on the job, including Foreman Harrison, again walked off, working only 7 hours on March 4, 3 hours on March 5, and staying away all day on March 6, 7, and 8, 1963 (J.A. 33, 74; 105-106, 138-139, 157-158, 179; G.C. Exh. 7). Kammer did not authorize the union members to be away from work any of those days, and electricians' work remained to be done by that firm at the site (J.A. 32, 74; 105-106, 110-111).

Dade filed unfair labor practice charges; the General Counsel petitioned for an injunction under Section 10(1) of the Act; and a hearing was held in the U.S. District Court for the Southern District of Florida on March 7, 1963 (J.A. 74; 95, 161). On March 8, the District Court issued an injunction,<sup>5</sup> and on March 11, the petitioner sent a new crew of electricians, which started working on the job (J.A. 33, 74; 151, 172).

## II. The Board's Conclusions and Order

On the foregoing facts, the Board concluded, in agreement with the Trial Examiner, that petitioner violated Section 8(b)(4)(i) and (ii)(B) of the Act by: (a) through its agent, McLain, causing a strike on September 13 and 14, 1962, at the Village Green job site, with the object of bringing pressure on J. M. Coker, Inc., to cease doing business with Dade (J.A.

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<sup>5</sup> *Harold Boire, Regional Director, etc. v. Local 349, International Brotherhood of Electrical Workers, AFL-CIO*, Civil No. 63-115-CIV-DD, (unreported).

69-70); (b) through its agent, Disney, threatening a work stoppage of the electricians on the Miami Laundry job site, with the same object as found under (a) (J.A. 71-72); (c) through its agent, Stamp, threatening and coercing employers at the Publix Warehouse job site, particularly J. M. Coker, Inc., on February 4, 1963, with an object of forcing those employers to cease doing business with Dade (J.A. 72-73); and (d) conducting strikes at the Pan American Hospital job site in February and in March 1963, with an object of forcing and requiring J. M. Coker, Inc., to cease doing business with Dade (J.A. 75-77).<sup>6</sup>

The Board's order requires the Union to cease and desist from the unfair practices found and from like actions where an object is to force or require any person engaged in commerce to cease doing business with Dade, and to post appropriate notices (J.A. 78-80).<sup>7</sup>

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<sup>6</sup> Board Members Fanning and Jenkins dissented from the finding under (d) (J.A. 76).

<sup>7</sup> Contrary to the Trial Examiner's recommendations, the Board dismissed the complaint insofar as it alleged that the Union violated Section 8(b)(4) by threats engaged in by a member of the Union (Laschower) at another construction site (J.A. 20-26, 41, 77-78).

While the Board adopted the Trial Examiner's credibility resolutions, and findings of fact and his final recommendations to the extent indicated *supra*, it did not, as a basis for its findings "adopt or rely upon his reasoning which imputes responsibility to the [Union] on the basis that [the Union] 'acquiesced in, tolerated \* \* \* and ratified a code of conduct by its members not to work with people regarded as non-union.'" (J.A. 65, 67) Since the disagreement between the Board and the Trial Examiner involves a conclusion of law, rather than credibility determinations, the Trial Examiner's reasoning is not entitled to special weight. *Los Angeles Mail-*

## SUMMARY OF ARGUMENT

1. Section 8(b)(4)(B) is aimed at restricting the area of industrial conflict by barring pressures upon neutral employers. Petitioner here claimed jurisdiction over the work of installing sound equipment on construction sites, and it objected to the performance of such work by the employees of Dade, who were members of CWA. Prior to the six-month limitation period preceding the filing of charges in this case, petitioner, through its business agents, laid down a policy that its members were going to strike on any project on which such installation work was to be performed by members of the rival union. On the Village Green Crown Lanes project, petitioner's job steward protested the presence of CWA members and walked out with all the members of petitioner who

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*ers Union No. 9 v. N.L.R.B.*, 114 App. D.C. 72, 75, 311 F. 2d 121, 124; *United Furniture Workers of America v. N.L.R.B.*, 118 App. D. C. 350, 352, 336 F. 2d 738, 740, cert. denied, 379 U.S. 838, *Int'l Union United Automobile etc. Workers v. N.L.R.B.*, — App. D.C. —, 344 F. 2d 171. Accord: *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 494, 496. Petitioner's contention (Br. 54-53) that the Board should have rejected the Trial Examiner's factual findings because it did not agree with his legal theory is not supported by legal authority and, we submit, is insubstantial. The same applies to petitioner's contention (Br. 57-60) that it did not have a fair hearing, because the Trial Examiner ruled on all points against it and because he followed an erroneous theory of law. It is settled that bias or prejudice of a trier of fact cannot be based on the claim that his theory of the applicable law is contrary to that adopted by an appellate tribunal. *Berger v. United States*, 255 U.S. 22, 31; *N.L.R.B. v. Donnelly Garment Co.*, 330 U.S. 219, 236-237; *N.L.R.B. v. Stackpole Carbon*, 105 F. 2d 167, 177 (C.A. 3) cert. denied, 308 U.S. 605.



were on the site. Subsequently, he stated that when he left the site, the other members of petitioner would follow suit. The Board concluded properly that the job steward did not act as an individual, but rather, on behalf of the Union and that the Union, through him, induced the strike. The record also supports the finding of the Board that the strike and threats had the purpose of having Dade replaced by other firms whose employees were members of petitioner.

The Board's use of such background evidence to shed light on matters occurring subsequently, is in accord with settled law. *Local Lodge 1424 v. N.L.R.B.*, 362 U.S. 411; *Local 833, Int'l Union, etc. v. N.L.R.B.*, 112 App. D.C. 107, 300 F. 2d 699, cert. denied, 370 U.S. 911.

2. During the period of time covered by the charges in this case, petitioner's shop stewards pursued substantially the same course of action on the Village Green Crown Lanes and on two additional projects. On the first project the shop steward and the other members of the petitioner walked off the job as soon as the employees of Dade appeared. On the Miami Laundry job, petitioner's steward stated that he was not going to work with the CWA employees and threatened the employing contractors with a strike if such employees were to come to the job site. Petitioner's steward on the third construction site again took the initiative in checking the union cards of the CWA members, threatened to leave the job, and affirmed the apprehension expressed by management representatives that the other union members would do the same. Although no strikes were

called formally, the action and statements of petitioner's stewards were intended to, and did, induce the employees to go on strike, and the thinly veiled threats of strike action uttered by the stewards constituted threats and coercion of the employers within the meaning of Section 8(b)(4)(ii). *Los Angeles Mailers Union v. N.L.R.B.*, 114 App. D.C. 72, 74, 311 F. 2d 121, 123; *N.L.R.B. v. Local 135, Int'l Brotherhood of Teamsters*, 267 F. 2d 870 (C.A. 7), cert. denied, 361 U.S. 914. In the circumstances presented, the Board properly inferred that petitioner's object was to bring about the cessation of business between Dade and the other employers. *New York Mailers Union No. 6 v. N.L.R.B.*, 114 App. D.C. 370, 316 F. 2d 371.

3. The job stewards appointed on the several construction sites were looked upon by management and the employees alike as the representatives of petitioner. Their function was to protect petitioner's jurisdiction and to enforce its work rules, and persons dealing with the stewards could reasonably believe that the acts and statements of the stewards in keeping members of a rival union off the several projects were within the scope of their authority. *N.L.R.B. v. Brewery & Beer Distributors Drivers*, 281 F. 2d 319 (C.A. 3); *N.L.R.B. v. Local 815, Int'l Brotherhood of Teamsters*, 290 F. 2d 99 (C.A. 2).

4. The Board found properly that petitioner is responsible for repeated strikes by its members working on the Pan American Hospital job. The Act creates such liability for "every form of influence and

persuasion" by which a union induces or encourages its members to take strike action for a prohibited object. *I.B.E.W. v. N.L.R.B.*, 341 U.S. 694, 701-702. In the present case the inducement consisted in petitioner's policy not to work with members of the CWA, as laid down by its officers and carried out by its shop stewards and its members on the other projects. This policy of the Union and the strikes and threats of strikes occurring in the same geographic area and approximately the same time as the walkout on the Pan American job were known to, and approved by, the members on that job and induced them to take strike action. *Local 8, Int'l Brotherhood of Electrical Workers*, 140 NLRB 729, enforced, 325 F. 2d 561 (C.A. 2); *United States v. Int'l Union United Mine Workers*, 77 F. Supp. 563 (D.C. D.C.), aff'd, 85 App. D.C. 149, 177 F. 2d 29, cert. denied, 388 U.S. 871.

5. The Board's order is directed to prevention of the commission of unfair practices related to the proven unlawful conduct. Petitioner aimed at preventing Dade's employees to do any work which petitioner considered within its jurisdiction, regardless of which contractor or subcontractor engaged Dade. The Board was, therefore, justified in ordering petitioner to desist from secondary strike action, or coercion of or threats against any person in order to bring about the cessation of business between Dade and such person.

## ARGUMENT

### **I. The Board Properly Found That the Union Violated Section 8(b)(4)(i) and (ii)(B) by Threatening Secondary Employers With Work Stoppages and Inducing Work Stoppages on Four Building Sites**

#### **A. Introduction**

Section 8(b)(4) of the Act, as amended in 1959, proscribes, as did the corresponding provision of the 1947 Act, the implication of neutral employers in disputes not their own where an object is to force the cessation of business relations between the neutral employer and any other person. "The impact of the section [is] directed toward what is known as the secondary boycott whose 'sanctions bear, not upon the employer who alone is a party to the dispute, but upon some third party who has no concern in it.' \* \* \*."

*Local 761, Int'l Union of Electrical, Radio & Machine Workers v. N.L.R.B.*, 366 U.S. 667, 672. Accord: *Local 5, United Assn etc. v. N.L.R.B.*, 116 App. D.C. 100, 105, 197, 321 F. 2d 366, 371, cert. denied, 375 U.S. 921; *Miami Newspaper Pressmen's Local 46 v. N.L.R.B.*, 116 App. D.C. 192, 197, 322 F. 2d 405, 409; *National Maritime Union v. N.L.R.B.*, — App. D.C. —, — F. 2d —, 58 LRRM 2827, 2832, (No. 18789, decided April 15, 1965). The prerequisite for the finding of a Section 8(b)(4)(B) violation is that an object of the conduct of a labor organization is to force one person to cease doing business with another person. The means proscribed by the section are twofold: (1) that a labor organization conducts a strike or induces or encourages any indi-

vidual engaged by any person to engage in a work stoppage (Section 8(b)(4)(i)); or (2) that a labor organization threatens, coerces, or restrains any person (Section 8(b)(4)(ii)). We propose to show that in the present case the record supports the finding of the Board that petitioner induced and encouraged its members to engage in work stoppages and threatened secondary employers with strikes, and that the object of this conduct was to force the several employers engaged on the construction projects where Dade installed sound equipment, to cease doing business with Dade.

***B. Petitioner's activities resulting in the ouster of Dade from construction projects prior to the commission of the unfair labor practices***

In May 1962, petitioner through Business Agent Apte, made it clear that it considered the performance of sound installation work by members of the CWA as an encroachment upon its jurisdiction and that its members were going to strike on any project on which members of the CWA were engaging in such work (*supra*, p. 3). Later developments showed that this was not idle talk because in July 1962, McLain, a job steward for petitioner, told Statcavage, the representative of the electrical contractor, that Dade's employee MacMillan could not "work out," and shortly thereafter left the job with all other members of the Union (J.A. 118-119). The entire group returned to work in a body the next day, following McLain's lead. Later, in August, McLain told Statcavage that if he walked off a job because he did not



want to work with "non-union" employees, the other electricians would follow suit. This was, as noted by the Board (J.A. 69), "a thinly disguised threat" that if the work was to be done by members of the CWA instead of petitioner, there would be a strike. *N.L.R.B. v. Local 3, I.B.E.W.*, 325 F. 2d 561, 562 (C.A. 2); *Cuyahoga, etc. Carpenters District Council*, 143 NLRB 872, 873-874, enforced, 338 F. 2d 958 (C.A. 6); *Building & Construction Trades Council of Tampa*, 132 NLRB 1564, 1568, 1581-1582. Since the electrical contractor needed petitioner's members for the general electrical work to be performed on the various projects but—as events proved—could easily replace the CWA employees of Dade by "sound men" furnished by the Union, this strike threat constituted a potent weapon against the electrical contractors. The Board properly disregarded McLain's self serving testimony that he acted only as an individual and not in his capacity as work steward (see *N.L.R.B. v. Local 815, Int'l Brotherhood of Teamsters*, 290 F. 2d 99, 104 (C.A. 2)), since, as found by the Board (J.A. 70), he made no effort to advise the union members at the site that he was acting as an individual. Moreover, he did not permit the members to stay or leave as each of them might have seen fit (*ibid.*). Also, the fact that all electricians on the job walked out and returned with McLain in July, supports the Board's finding "that at pertinent times [the Union's members] at this site acted in response to the leadership of the union representative" (J.A. 70). " \* \* \* [H]ere, as in every other fact finding, inferences from circumstances are permissible." *The Lummus*

*Co. v. N.L.R.B.*, — App. D.C. —, —, 339 F. 2d 728, 734.<sup>9</sup>

**C. *Petitioner violated Section 8(b)(4)(i)(ii)(B) by causing work stoppages and threatening other work stoppages on four construction projects***

**1. *Strikes caused or threatened by petitioner's job stewards***

**A. *Village Green Crown Lanes Job.*** When the employees of Dade appeared on the site on September 13, there occurred a repetition of the events of July 27 and July 28, in that a member of petitioner, Foreman

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<sup>9</sup> In view of the six-month limitation period of Section 10(b) of the Act, the Board relied on events prior to August 7, 1962, solely as background (J.A. 68). The Board's use of such background events to "shed light on the true character of matters occurring subsequently," is in accord with settled judicial authority. *Local Lodge 1424 etc. v. N.L.R.B.*, 362 U.S. 411, 416; *Local 833, Int'l Union United Automobile, etc. Workers v. N.L.R.B.*, 112 App. D.C. 107, 114, 300 F. 2d 699, 706, cert. denied, 370 U.S. 911; *N.L.R.B. v. Fitzgerald Mills Corp.*, 313 F. 2d 260, 264 (C.A. 2), cert. denied, 375 U.S. 834; *N.L.R.B. v. Craig-Botetourt Electric Corp.*, 337 F. 2d 374, (C.A. 4). Petitioner's reliance (Br. 17-18) on the holding in *Local Lodge 1424, supra*, is misplaced. The Court there found that in the absence of the union's lack of a majority at the time of the execution of a union security contract "enforcement of this otherwise wholly valid union security clause was wholly benign" (362 U.S. at 417) and that the fact of the lack of such majority at a time prior to the limitations period could not be shown under Section 10(b). In the present case, the "occurrences within the six months limitation period in and of themselves" (*loc. cit.* 416) were shown to have been unfair labor practices, in which case the use of prior occurrences was proper as background evidence, as held in the cases cited *supra*. The same observation applies to the other cases cited by petitioner on this point (Br. 18).

Logan, inquired at once of them whether they were going to perform the sound installation work, and as soon as he received an affirmative answer, petitioner's members, including Logan and McLain, the shop steward walked off the job.\* The Board concluded that "although there is no direct evidence that McLain requested the employees to strike on September 13, \* \* \* the inference is inescapable that the [Union] through its agent McLain, caused the strike of its members at the Village Green site when Dade showed up to perform the sound work \* \* \*." (J.A. 70.) The Board based this inference on the background of McLain's threat to Statcavage in August that there would be a strike if CWA were to perform the work claimed by petitioner the incidents of July 27 and 28; and the prior opposition of petitioner to the performance by Dade's CWA employees of work claimed by petitioner."

We submit that this inference is amply warranted by the record and merits affirmance by this Court. See *Local 8, Int'l Brotherhood of Electrical Workers*, 140 NLRB 729, 739-740, enforced, 325 F. 2d 561 (C.A. 2); *N.L.R.B. v. Local 135, Int'l Brotherhood of Teamsters*, 267 F. 2d 870, 873 (C.A. 7), cert. denied, 361 U.S. 914. The record also supports the conclusion of

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\* There was no longer any need to check the union cards of the Dade employees, since McLain knew from the July events that they were members of another labor organization, or, as he termed it, "non-union" (*supra*, p. 5).

"We show below (p. —) that the record supports the Board's finding that McLain and the other job stewards involved were "agents" of the Union.

the Board that the object of the strike was to have the electrical contractor (Coker) replace the subcontractor Dade by some other employer who employed members of the Union, or, in other words, to compel Coker to cease doing business with Dade, in violation of Section 8(b)(4)(B). *Local No. 5, United Association, etc. v. N.L.R.B.*, 116 App. D.C. 100, 321 F. 2d 366, cert. denied, 375 U.S. 921; *New York Mailers Union No. 6, etc. v. N.L.R.B.*, 114 App. D.C. 370, 316 F. 2d 371; *Miami Newspaper Pressmen's Local 46 v. N.L.R.B.*, 116 App. D.C. 192, 322 F. 2d 405. It is understandable that petitioner was somewhat less outspoken when calling out its members in September, and on subsequent occasions, after it had consented in August to a Board order and court decree enjoining it from illegal secondary activity (*supra*, p. 4), but this in no way weakens the inferences drawn herein by the Board.

B. *Miami Laundry job.* When Dade's employees came on this building site, petitioner's shop steward, Disney again took the initiative, checked the union cards of the "outsiders," stated that he was not going to work with Dade and its employees, and threatened the representatives of the contractors with a strike if MacMillan came on the job. As found by the Board (J.A. 71), while Disney's comment that he was not going to work with Dade might be considered as a reflection of his personal feeling, his additional statement about a work stoppage went further and amounted to a threat to lead a strike of the electricians on the job site if Dade was to perform sound work at the site. If considered together with Disney's

other statement that the Union had members of its own who could perform the work, his purpose became obvious. He wanted Coker to get rid of Dade and reassign the sound work to a firm which employed members of petitioner. The Union, acting through its steward, thus violated Section 8(b) (4) (ii) (B).

C. *The Publix Warehouse job.* The events on this site are in all relevant respects identical with those on the Miami Laundry job. Petitioner's shop steward, Stamp, checked the cards of the Dade employees, and told the employer representatives that he would leave when the CWA started working and that the work should be done by members of the Union who were available (*supra*, p. 9). The employer representatives were assured that if the shop steward walked off, the 30 other members of the Union would "start dropping like flies and then leave" (J.A. 196). Not wanting to take that chance, Coker cancelled the assignment of work to Dade and gave it to a union contractor (*supra*, p. 9). Whereas the shop steward at the previous Miami Laundry site stated, in so many words, that there would be a strike, the shop steward at the Publix site agreed with the employer representative that when the steward left, the other employees would follow him at once. The Board correctly concluded (J.A. 72-73), that the latter occurrence was just as much a threat of a work stoppage, as the declaration of the previous steward that there would be a strike, and that the purpose of the threat was to force the electrical contractor, Coker, to cease doing business with Dade. See *Chauffeurs, Teamsters and Helpers Local 175*, 128 NLRB 522, 534, 536, enforced



on this point, 111 App. D.C. 65, 294 F. 2d 261, and *Los Angeles Mailers Union v. N.L.R.B.*, 114 App. D.C. 72, 74, 311 F. 2d 121, 123.

2. *Petitioner's responsibility for the actions of its job stewards*

As shown above, at three of the building sites, petitioner's job stewards played a leading role in bringing about the removal of Dade from the scene. On the Village Green Crown Lanes job (*supra*, pp. 4-5, 6). Steward MacLain objected to Dade's presence on the job and led a walkout of all electricians on July 27 and 28, and again on September 13 and 14, 1962. Steward Disney threatened secondary employers with a work stoppage on the Miami Laundry job if the Dade employees appeared on the site and brought about the reassignment of Dade's work to a contractor who employed members of petitioner (*supra*, pp. 7-8). And, at the Publix Warehouse site (*supra*, pp. 8-9) Steward Stamp threatened the contractors with a strike and achieved his purpose of ousting Dade from the project. Petitioner contends that it was not responsible for the actions of any of its stewards because they were acting as individuals and not as its agents. We submit that the Board properly rejected this contention.

The three stewards were appointed by the Union, which also requires the steward to turn in his identification papers when a job is finished or the Union has removed him (J.A. 69; 198-199, 211, 190, see also J.A. 168-169). One of the duties of the steward is to straighten out all problems on the job on his own

initiative (J.A. 69; 172-173, 183). He is required under the Union's by-laws to report any encroachment on its claimed jurisdiction, and admittedly is obligated to enforce compliance with the Union's work rules (J.A. 34, 69; 167, 182).<sup>11</sup> Steward MacLain testified that he had men available to do the sound installation work when such work "came up," and that in his capacity as a steward he kept the payroll time of the electricians on the job (J.A. 15, 69; 199, 204-205). Steward Stamp considered it the function of the steward to enforce the working agreement with the employer (J.A. 194). The Board, therefore, properly concluded that MacLain and the other stewards were looked upon by management and the employees alike as the representatives of the Union at the several projects (J.A. 69).

Under Section 2(13) of the Act the status of the shop stewards as agents of the Union does not depend upon any showing that their specific acts "were actually authorized or subsequently ratified." As the Second Circuit held in *N.L.R.B. v. Local 815, Int'l*

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<sup>11</sup> Petitioner's contention (Br. 36) that the Trial Examiner "departed from the record in finding facts by considering the Union's by-laws \* \* \* not introduced in evidence" is unfounded. This finding adopted by the Board (J.A. 34, 69) is supported by the testimony of Albury, an assistant business agent for petitioner (J.A. 180, 182-183). It was not objected to, nor did petitioner see fit to introduce its by-laws in contradiction. Insofar as the Trial Examiner took judicial notice of the constitution of petitioner's parent body (J.A. 34), the Board did not rely on the latter document in any way (J.A. 69), so that the Trial Examiner's taking of judicial notice was at most harmless error, and was immaterial to the outcome of the case.

*Brotherhood of Teamsters*, 290 F. 2d 99, 103, "[t]his provision serves to underscore the incontestable proposition that, in this field as elsewhere, a principal may be held responsible for the acts of an agent whom it has placed in such a position that persons dealing with the agent may reasonably believe the acts to be authorized." Accord: *N.L.R.B. v. Int'l Brotherhood of Boilermakers*, 321 F. 2d 807, 810 (C.A. 8); *N.L.R.B. v. Local 138, Operating Engineers*, 293 F. 2d 187, 196 (C.A. 2); *N.L.R.B. v. Int'l Longshoremen's, etc. Union*, 283 F. 2d 558, 563 (C.A. 9). See also Re-statement, Agency, 2d ed., Sec. 161, and *Int'l Longshoremen's etc. Union*, 79 NLRB 1487, 1507-1509. The acts and statements of the job stewards here involved were in accord with the statement of the Union's business agent, Apte, that if the rival union, the CWA, to which Dade's employees belonged, did not remove its members from a job claimed to be under the Union's jurisdiction, the Union members "would be walking" (*supra*, p. 3). Therefore, when the stewards on the job prevailed on the employees to take certain action or threatened the employers with work stoppages, the employees and employers concerned could well believe that they were speaking for the Union. *N.L.R.B. v. Brewery & Beer Distributor Drivers etc.*, 281 F. 2d 319, 322-323 (C.A. 3); *Truck Drivers & Helpers Local Union No. 728 v. N.L.R.B.*, 332 F. 2d 693, 697 (C.A. 5), cert. den., 379 U.S. 913; *Local Union 522, Lumber Drivers*, 126 NLRB 297, 304, enforced 281 F. 2d 952 (C.A. 3).<sup>12</sup>

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<sup>12</sup> Under customary union practice, shop stewards are given broad authority as the on-the-spot representatives of the un-

The cases relied on by the Union are distinguishable and hence inapposite here. This Court's decision in *International Ladies Garment Workers v. N.L.R.B.*, 99 App. D.C. 64, 237 F. 2d 545, (Union br. 15, 32, 36) is to the effect that, absent an agency relationship, an employee may not be charged with misconduct committed by others and that proof of individual wrong doing is a prerequisite to disqualification of unfair labor practice strikers for reinstatement and backpay. That case did not involve the responsibility of a union for acts of its shop stewards or other persons acting as its agents. Petitioner's reliance (Br.

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ion in the plant, to maintain harmonious union-management relations. "The steward is to the union what the foreman is to the company—the key man in its whole collective bargaining set-up. Just as the foreman is the company to the average worker, so the steward is the union." *Settling Plant Grievances*, U.S. Department of Labor, Division of Labor Standards, Bulletin No. 60, G.P.O. 1944, p. 32. See also *Local 761, International Union of Electrical Workers*, 126 NLRB 123, 125, enforced 287 F. 2d 565 (C.A. 6), and *Cuyahoga etc. Carpenters' District Council*, 143 NLRB 872, 875, enforced, 338 F. 2d 958 (C.A. 6).

For other cases under Section 8(b) (4) (B) or its counterpart under the 1947 Act in which Unions have been held responsible for actions of job stewards see: *Truck Drivers & Helpers Local Union No. 728 v. N.L.R.B.*, 265 F. 2d 439, 443 (C.A. 5), cert. denied, 361 U.S. 917; *N.L.R.B. v. International Brotherhood of Teamsters, Local 249*, 249 F. 2d 292 (C.A. 3); *N.L.R.B. v. International Brotherhood of Teamsters, Local 182*, 228 F. 2d 83, 84 (C.A. 2); *N.L.R.B. v. Chauffeurs, Teamsters & Helpers, Local 364*, 274 F. 2d 19, 22-23 (C.A. 7); *N.L.R.B. v. International Brotherhood of Boilermakers, etc., supra*, 321 F. 2d at 810-811 (C.A. 8); *N.L.R.B. v. Cuyahoga etc. Carpenters' District Council*, 338 F. 2d 958 (C.A. 6); *United Brotherhood of Carpenters*, 100 NLRB 753, 754, 761, enforced, 205 F. 2d 515 (C.A. 10).

10, 15, 16, 20, 24) on *N.L.R.B. v. P. R. Mallory & Co.*, 237 F. 2d 437 (C.A. 7) is equally misplaced. In that case shop stewards had participated in a strike designed to cause the employer to discharge an unpopular employee. In denying enforcement because of insufficient evidence to support the finding of union responsibility, the Court at p. 441-442 relied principally on two factors: first, that the 200 stewards in the plant were elected by their own small units, had no authority beyond the groups that elected them and could not be removed except upon petition by a majority of their constituents; and, second, that the strike was contrary both to the collective bargaining agreement and to known union policy, the stewards having been informed by the union that such stoppages were unlawful. In the instant case, in contrast, there was a single steward on each job appointed by petitioner and subject to removal by it. Also, in *Mallory* there was no evidence to show that the stewards themselves made any demands on management, whereas here they presented forcefully the Union's policy to the several employers. See *N.L.R.B. v. Brewery etc. Drivers*, *supra*, 281 F. 2d at 322 fn. 10. The Seventh Circuit itself, in *N.L.R.B. v. Local 135, International Brotherhood of Teamsters*, 267 F. 2d 870, 873, cert. denied, 361 U.S. 914, limited *Mallory*, by declaring it to have been "based largely on the undisputed fact that the stewards were acting contrary to Union policy and to the express directions which they had received from the Union," holding the decision inapplicable in a case where the stew-



ards were furthering the union's policy by refusing to accept hot cargo.

In *N.L.R.B. v. Shen-Valley Meat Packers*, 211 F. 2d 289 (C.A. 4) (Union br. 15) the court held that a union did not cause an employer to discriminate against an employee because of membership in a rival union. It found, contrary to the Board, that the union steward whose complaint against the employee brought about the discharge had no knowledge of the rival union membership and that she based her complaint exclusively on personal grievances against the employee. In *Reynolds v. Local 1522, Lumber Drivers*, 43 LRRM 2001, 35 CCH Labor Cases par. 71,906 (D.C. N.J. not officially reported) (Union br. 15) the court denied a petition for an injunction under Section 10(1) of the Act because it could not be inferred that a steward was an agent of a union merely on the basis of his title, and there was no evidence of a strike or other concerted action but only of a refusal to work on part of the steward, who did not induce or encourage others to follow suit. Equally unavailing to the Union is *Superior Engraving Co. v. N.L.R.B.*, 183 F. 2d 783 (C.A. 7), cert. denied, 340 U.S. 930, (Union br. 10, 14). The Court at p. 792 approved the Board's exclusion as hearsay, testimony by the employer that certain employees told him that they had left their job at the direction of the union. The Court agreed that the testimony could only prove that the employees had made such statements but not that the Union had, in fact, ordered a withdrawal. The Court further held that statements of individual *members* (not claimed to be officers or agents of the

union) were not binding on it. In the case at bar, the Board held the Union responsible for certain acts and statements of the stewards only after it had found independently that they were agents of the Union within the meaning of Section 2(13) of the Act.

Nor is the Board's decision herein in conflict with the various Board cases relied on by the Union. Thus, in *Building & Construction Trades Council of Tampa*, 132 NLRB 1564, 1569 (Union br. 10, 16, 20, 24) the Board held that a union was not responsible for the action of a steward who left the job, because he was unwilling to handle non-union products but who did not ask or otherwise induce other members to follow him, who was not followed by such members, and who already had been replaced by an assistant steward. In that same case, the Board found that two work stoppages were not instigated by job stewards, because as to the first incident, there was no evidence of the steward's activity except that he "circulated around" before the stoppage (p. 1567), and as to the second, that the evidence was as susceptible to a finding of common or joint action on the part of the union members as to the inference of leadership by the steward (p. 1568). This is clearly different from the present situation where the stewards acted as agents for petitioner and where they actually instigated the walkoffs. The Board in *Building & Construction Trades Council of Tampa*, as in the present case, did hold the union liable for the acts of other stewards who threatened work stoppages or brought about such stoppages (pp. 1568, 1570-1571, 1580, 1582-1583). In *Poinsett Lumber Co.*, 107 NLRB 234,

(Union br. 14) the Board held that mere advocacy of a union by rank-and-file employees did not constitute them agents of the union so as to make it responsible for any alleged threats by such employees. And in *Local 84, Int'l Association of Bridge etc. Workers*, 129 NLRB 971 (Union br. 14, 17) the Board found at p. 978-979 that while normally the membership obligations of a foreman who is a union member are not greater than those of other members and the union is not chargeable for his discriminatory actions, in that case he assumed to act and did act as the union's agent. The responsibility of job stewards appointed by the union for actions within the scope of their office was not involved in that case.

It is settled that the issues of whether a steward was "acting as an agent for the union and whether he acted within the scope of his authority, actual, inherent, or apparent," are fact issues within the meaning of Section 10(e) of the Act, as to which the finding of the Trial Examiner, adopted by the Board can be set aside only if unsupported by substantial evidence on the whole record. *N.L.R.B. v. Local 815, International Brotherhood of Teamsters, supra*, 290 F. 2d at 104; *N.L.R.B. v. Local 138, Operating Engineers*, 293 F. 2d 187, 196 (C.A. 2); *N.L.R.B. v. International Brotherhood of Boilermakers, supra*, 321 F. 2d at 810. We submit that no such showing has been made by the Union in the present case.

3. *The responsibility of petitioner for the work stoppages at the Pan American Hospital job*

As has been shown (*supra*, pp. 10-12), petitioner's members on this site took action which exactly paralleled the events occurring on the other sites when the Dade employees began to work on the installation of sound equipment. As soon as MacMillan and Oliveira arrived on the site on February 6, one of petitioner's members demanded to see their cards and immediately told Foreman Harrison that petitioner did not recognize the jurisdiction of the CWA to perform the work in question (J.A. 73). Harrison again checked the membership cards of the CWA members and shortly thereafter walked off the site with all other IBEW electricians (J.A. 73-74). On two subsequent occasions, February 19 and March 4, petitioner's members repeated this performance when they noted the presence of the Dade employees on the job (*supra*, pp. 11-12; and J.A. 74). Taylor and Harrison testified at the hearing that their actions in walking off the job were due to their desire to protect petitioner's work jurisdiction and that they would not work alongside employees belonging to another union who performed work within petitioner's jurisdiction (J.A. 76; 175-176, 178-179, 184, 188-190). Another union member on the site, when he joined the walkout, gave the same explanation to Foreman Harrison (J.A. 76; 176-178). During the preceding month, Foreman Harrison, who held membership in respondent, had already told Sullivan, an electrical engineer on the

project, in substance, that he had been "told" not to work with Dade employees (*supra*, p. 10).<sup>13</sup>

We submit that the Board could properly find, as it did (J.A. 75) that these repeated walkouts<sup>14</sup> were "induced and encouraged" by the Union. It is settled that "the words 'induce or encourage' are broad enough to include in them every form of influence and persuasion." *I.B.E.W. v. N.L.R.B.*, 341 U.S. 694, 701-702; *Truck Drivers Local Union 728 v. N.L.R.B.*, 265 F. 2d 439, 443 (C.A. 5), cert. denied, 361 U.S. 917; *N.L.R.B. v. Local 294, Int'l Brotherhood of Teamsters*, 284 F. 2d 887, 893 (C.A. 2). One such form of influence is a union's frequently voiced opposition to certain employer action which the union claims as being in violation of its work jurisdiction. Where union policy is well established with respect to the dispute which precipitates the stoppage and where

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<sup>13</sup> Before the Trial Examiner, Sullivan testified that Harrison's answer was to the effect that a business agent of the Union (whom he did not name) had given such instruction (J.A. 29; 140-141). Before the District Court he did not give the source of the instructions reported to him by Harrison (J.A. 29; 97). The Trial Examiner carefully discussed and evaluated Sullivan's testimony and credited him to the extent indicated above, and the Board concurred in such finding (J.A. 29, 65). It is settled that the credibility of witnesses is a matter for the determination of the Board. *Joy Silk Mills, Inc. v. N.L.R.B.*, 87 App. D.C. 360, 185 F. 2d 732, 738, 741, cert. denied, 341 U.S. 914; *News Printing Co. v. N.L.R.B.*, 98 App. D.C. 14, 17, 231 F. 2d 767, 770, cert. denied, 352 U.S. 845; see also *Miami Newspaper Pressmen's Local 46 v. N.L.R.B.*, 116 App. D.C. 192, 196, 322 F. 2d 405, 409; accord: *N.L.R.B. v. Walton Mfg. Co.*, 369 U.S. 404, 408.

<sup>14</sup> Harrison testified that he walked off this job site four times in all (J.A. 179).



agents of the union have threatened or conducted frequent strikes in pursuance of such policy in the same area and at about the same time, it is a fair conclusion that no express words or signs by agents of the union are needed to induce members of the union to repeat such action. *Local 756, Int'l Brotherhood of Electrical Workers*, 131 NLRB 1010, 1017; *Local 28, Int'l Stereotypers, etc. Union*, 140 NLRB 480, 483; *Local 3, Int'l Brotherhood of Electrical Workers*, 140 NLRB 729, 739-740, enforced, 325 F. 2d 561 (C.A. 2); see also *Joliet Contractors Assn. v. N.L.R.B.*, 202 F. 2d 606, 611-612 (C.A. 7), cert. denied, 346 U.S. 824 (effect of union by-laws enjoining members to protect the union's jurisdictional claims on the job site); *N.L.R.B. v. Local 751, United Brotherhood of Carpenters*, 285 F. 2d 633, 637, 640 (C.A. 9) (effect of trade rules); *Local 3, Int'l Brotherhood of Electrical Workers*, 141 NLRB 888, 893. In the present case, the Board noted (J.A. 75-76) that the agents of the Union had voiced, repeatedly, their opposition to Dade's performance of sound equipment work, and that stewards and members on the other construction sites had set an example to the members on the Pan American Hospital site by going out on strike. "From the frequency of these incidents \* \* \* it [is] manifest that all of [the Union's] members were well aware of their union's feelings as to Dade's CWA crew and the interest in protecting [the Union's] work jurisdiction which underlay such feelings" (J.A. 75). Under these circumstances, it was unnecessary for the members at that site to receive a specific call or command from their officers to stop working when they discov-

ered the Dade employees on the job site. The established policy of the Union and the example of their shop stewards and fellow members on the other sites constituted a strike call, just as in analogous circumstances "a nod or wink or code" were held sufficient to make a union responsible for an "allegedly spontaneous" walkout. *United States v. Int'l Union United Mine Workers*, 77 F. Supp. 563 (D.C. D.C.), affirmed, 85 App. D.C. 149, 177 F. 2d 29, cert. denied, 338 U.S. 871, Accord: *Int'l Union, United Mine Workers*, 83 NLRB 916, 918, enforced 87 App. D.C. 230, 184 F. 2d 392 (C.A. D.C.), cert. denied, 340 U.S. 943; see *United States v. Brotherhood of Railroad Trainmen*, 96 F. Supp. 428, 431-432, 435 (D.C. N.D. Ill.) involving wholesale absence of union members from their jobs claiming to be sick in the face of an injunction prohibiting a strike; *Amalgamated Meat Cutters*, 81 NLRB 1052, 1055-1056; *Local 760, Int'l Brotherhood of Electrical Workers*, 82 NLRB 696, 700-703.<sup>15</sup>

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<sup>15</sup> The cases relied on by petitioner are inapposite because of relevant factual differences. *Building & Construction Trades Council of Tampa*, 132 NLRB 1564 (Union br. 32-34) has been discussed *supra* p. 31 in connection with the Union's responsibility for its stewards. While the Board there held that the unions were not responsible for certain strikes (pp. 1567, 1568) it is important to note that responsibility was found for other strike actions. Moreover, in that case, contrary to the case at bar, there was no finding that the unions induced a strike by the establishment of a policy against working with non-union employees who were claimed to have infringed upon the union's jurisdiction; nor were there the examples set by the union's job stewards and members at other sites in connection with the

Petitioner's disclaimer (Br. 28-29) of responsibility for the actions on the Pan American Hospital site, based on the statement of Business Agent Albury to the employees to go back to work, is not persuasive. The men waited several days until they returned to work and again walked off in concert on February 19 and on March 4, as soon as the Dade employees appeared on the site (*supra*, pp. 11-12). It is obvious that Albury's statement did not amount to any instruction or order and that the employees did not so understand it. Nothing was done by the Union concerning the subsequent walkoffs until after the issuance of the District Court injunction, when the Union dispatched another crew of electricians at the request of the employer (*ibid.*). Compare *United States v.*

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same dispute with the non-union firm. In *Kaiser Aluminum & Chemical Corp.* 104 NLRB 873 (Union br. 33-34) the Board held that an employer did not violate the Act by discharging several employees who struck in violation of a no-strike clause. It rejected the contention that they did not engage in a concerted stoppage because the strike was not authorized by their union and ruled that, even in the absence of such authorization they were engaged in a concerted work stoppage for the purpose of protesting certain working conditions, i.e., in a strike. We fail to see the relevance of that case to the present situation. Petitioner also relies (Br. 31) on certain statements of the Trial Examiner in *Local 657, Int'l Brotherhood of Teamsters*, 115 NLRB 981, 998, 1001, to the effect that the "contemporaneous action of several small groups of union members" did not establish responsibility of the Union under Section 8(b)(4) of the 1947 Act. Petitioner seems to have overlooked the fact that the Board disagreed with these observations and held that union responsible for such action of its members (115 NLRB 981-982, 985-988, 989).

*Int'l Union United Mine Workers*, 89 F. Supp. 179 (D.C. D.C.), appeal dismissed as moot, 88 App. D.C. 341, 190 F. 2d 865, (Union br. (51)) where the dismissal of contempt charges was based on express written instructions by the union's headquarters to obey a temporary restraining order.

Petitioner (Br. 29) refers to the opinion of the dissenting Board members (J.A. 76) in suggesting that there is no relevant distinction between the work stoppages at the Pan American Hospital job and the incidents at the Lincoln National Life job. On the latter construction site, a member of respondent worked for the electrical sub-contractor, Kammer and Wood, either alone or occasionally with a helper (J.A. 20-26, 77-78). This electrician twice threatened officials of other employers that he would leave the site because he considered Dade's employees to be non-union and could not work with them (J.A. 77). His statements resulted in the removal of the Dade employees (*ibid.*). The Board, as stated (*supra*, p. 13, n. 7), held that these threats did not amount to a violation of Section 8(b)(4)(B) of the Act, and based its conclusion on the ground that the evidence did not support the finding that the employee was a job steward or other agent of the Union so as to make the Union responsible for his threats (J.A. 78; see *Building & Construction Trades of Tampa*, 132 NLRB at 1567-1568). The Board noted (J.A. 77), that the employee did not carry out his threats to leave the construction site. There was no concerted action, such as on the Village Green Crown Lanes and the Pan American Hospital jobs, and no threat of such action

by a person found to have acted as agent of the Union, such as on the Miami Laundry and the Publix Warehouse jobs. Therefore, the Board properly distinguished the situation on the Lincoln National Life Job from that at the Pan American Hospital, and its findings that the Union induced the walkouts on the latter job is not inconsistent with the contrary finding concerning the threats uttered by a member of petitioner at the latter site.

## II. The Board's Order is Valid and Proper

As stated (*supra*, p. 13), the Board's order forbidding efforts on the part of petitioner to bring about a cessation of business with Dade is directed towards unlawful inducement of employees of the several neutral employers affected by the Union's actions in the present case and of other employers, and towards threats, restraints, and coercion of such employers (J.A. 78-79). While the issue as to the scope of the Board's order has been raised in the pre-hearing stipulation (J.A. 1-2) petitioner's brief does not discuss it and we assume that the Court will consider it abandoned pursuant to its Rule 17(i). In any event, we submit that the inclusion of references to other employees and other employers in the Board's order is fully justified by the findings in this case. Petitioner's program of unlawful inducements and coercive action to bring about a cessation of business with Dade was widespread, and the Board could properly conclude that petitioner's purpose was to prevent Dade from doing any work with its employees that the Union considered within its jurisdiction. Since the Union's



action was thus aimed at all employers that might do business with Dade, the Board properly enjoined the Union "from exerting this pressure upon [Dade] through other employers as well as [the secondary employers in the present case]." *I.B.E.W. v. N.L.R.B.*, 341 U.S. 694, 705-706. Accord: *Bakery Wagon Drivers v. N.L.R.B.*, 116 App. D.C. 87, 92, 321 F. 2d 353, 358; *Central States Drivers Council v. N.L.R.B.*, 105 App. D.C. 338, 340, 267 F. 2d 166, 168 cert. denied, 361 U.S. 833; *Local No. 5, Plumbers v. N.L.R.B.*, 116 App. D.C. 100, 105-106, 321 F. 2d 366, 371-372, cert. denied, 375 U.S. 921; *N.L.R.B. v. Local 3, Int'l Brotherhood of Electrical Workers*, 325 F. 2d 561 (C.A. 2), enforcing, 140 NLRB 729, 733; *N.L.R.B. v. Highway Truckdrivers, Local 107*, 300 F. 2d 317, 322-323 (C.A. 3); *N.L.R.B. v. Int'l Hod Carriers, Local 1140*, 285 F. 2d 397, 404-405 (C.A. 8), cert. denied, 366 U.S. 903.

In sum, the Board's order is properly designed to reach activity which may reasonably be anticipated in view of its "similarity or relation to those unlawful acts which the Board has found to have been committed \* \* \* in the past." *N.L.R.B. v. Express Publishing Co.*, 312 U.S. 426, 436-437. It does not exceed the "wide latitude" granted to the Board in shaping remedies and is not "a patent attempt to achieve ends other than those which can fairly be said to effectuate the policy of the Act." *Fibreboard Corp. v. N.L.R.B.*, 379 U.S. 203, 216 affirming 116 App. D.C. 198, 322 F. 2d 411.

CONCLUSION

For the reasons stated above, we submit that the petition to review should be denied in this case and the Board's request to enforce its order granted.

Respectfully submitted,

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10-14-65  
(3)

**REPLY BRIEF OF THE PETITIONER**

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**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**No. 19,146**

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**LOCAL 349, INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, AFL-CIO,**

**Petitioner,**

**vs.**

**NATIONAL LABOR RELATIONS BOARD,**

**Respondent.**

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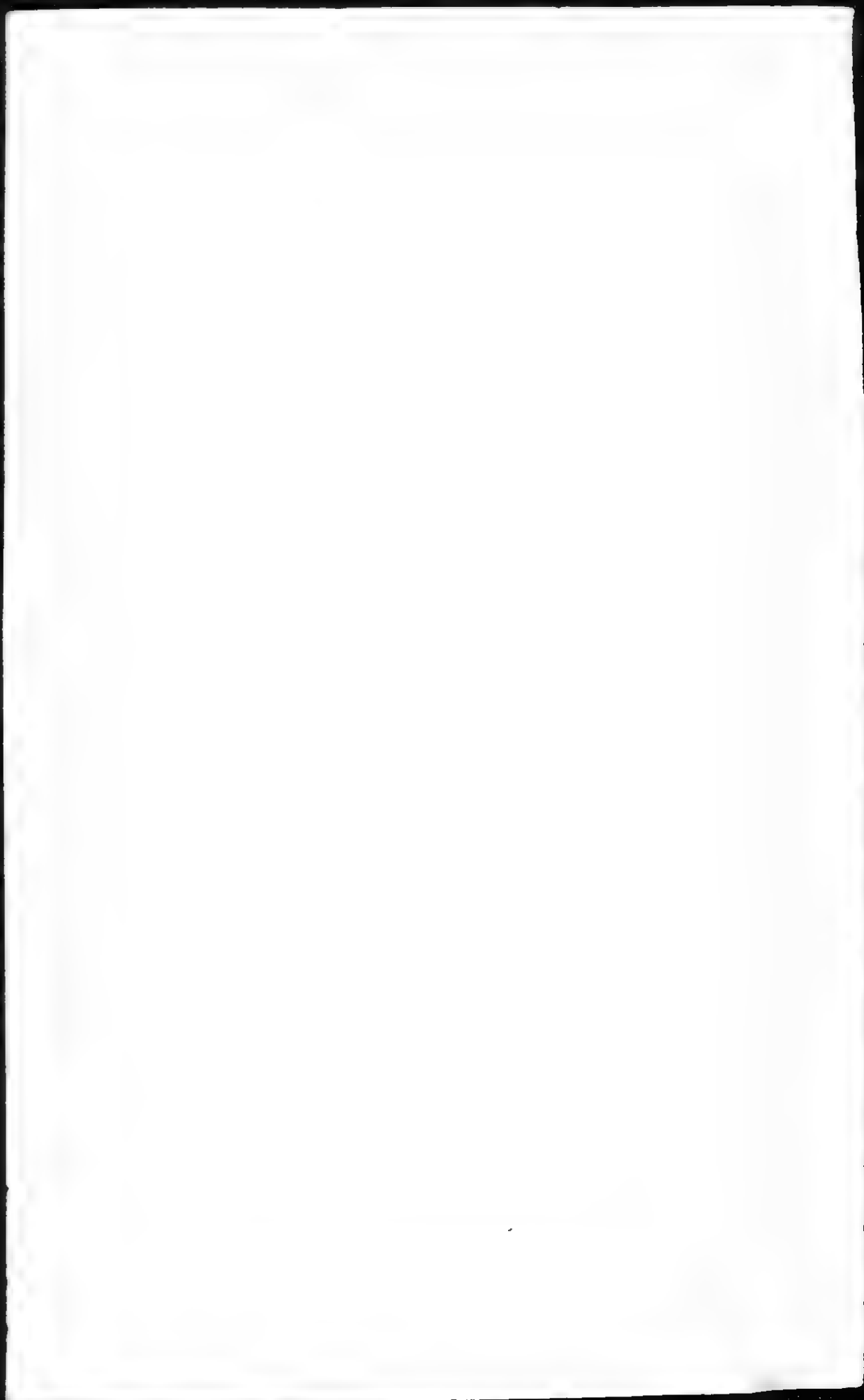
**On Petition for Review and Cross-Petition for Enforcement  
of an Order of the National Labor Relations Board**

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IN THE  
**UNITED STATES COURT OF APPEALS**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 19,146

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REPLY BRIEF OF THE PETITIONER

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## TABLE OF CASES

	Page
NLRB v. Breweries & Beer Distributive Drivers (CA-3; 1960) 281 F. 2d 319 .....	7
NLRB v. Don Juan Co., Inc. (CA-1950) 185 F. 2d 393 .....	4
NLRB v. International Brotherhood of Boiler Makers (CA-8; 1963) 321 F. 2d 807, 810 .....	9
NLRB v. Local 815 IBT (CA-2; 1961) 290 F. 2d 99 .....	8
*NLRB v. P. R. Mallory and Company (CA-7; 1956) 237 F. 2d 437 .....	8-9
NLRB v. United Brotherhood of United Carpenters (CA-10; 1953) 205 F. 2d 515 .....	8
Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 197, 61 S.Ct. 847, 853, L.Ed. 1271 .....	4
Sales Drivers, Helpers, etc. v. NLRB (Campbell Coal) (CA-DC; 1955) 229 F. 2d 514, 517 .....	3-4

**NLRB CASES**

	<b>Page</b>
Barker's East Main Corp., Inc. 136 NLRB, 494 (1962) .....	5
*Building and Construction Trades of Tampa (Tampa Sand Co.) 132 NLRB 1516, 1569 .....	10
Great Atlantic and Pacific Tea Co., Inc., 141 NLRB No. 5 .....	13
Murray Golub, et al, d/b/a Golub Brothers, et al, 140 NLRB No. 16, (1962) .....	12-13
J. J. Haggerty, Inc., Nassau County Contractors Association, Inc. and Local 138, International Union of Operating Engineers, AFL-CIO, et al, 139 NLRB, No. 40 .....	12
Kaiser Aluminum and Chemical Corp., 104 NLRB 873 .....	10
Local 3, International Brotherhood of Electrical Workers, 140 NLRB 729, enforced 325 F. 2d 561, (CA-2; 1963) .....	6
Local 3 IBEW (Western Electric Company, Inc.) 141 NLRB 888 (1963) .....	6-7
Local 657, International Brotherhood of Teamsters, 115 NLRB 981, 998, 999 .....	10
Longshoremen Local 418 (Lykes Bros. Steamship Co.), 102 NLRB 720 (1953) .....	5

\*Cases or authorities chiefly relied upon are marked by asterisks.

**STATUTES CITED****Page**

National Labor Relations Act, 1947 as amended, Act  
of June 23, 1947, C. 120, 61 Stat. 136, as  
amended, 1959, 49 Stat. 449, 61 Stat. 136, 73  
Stat. 519, 29 U.S.C. Sec. 151, et seq.,

Section 10(b) -----

1

## REPLY BRIEF OF THE PETITIONER

The Board bases its request for the relief that it seeks here mainly on the assumption that the Union had established a policy that its men would not work with Dade Sound. And this is a central theme repeated constantly in its brief. And so we find under the Argument, on Page 14 of the brief, the first reference to the fact that the "Petitioner, through its business agents laid down a policy that its members were going to strike on any project on which such installation work was to be performed by members of the rival union." Yet not a scintilla of evidence appears in the record to support this conclusion. The statements by Apte made in the summer of 1962, prior to the 10(b) period, do not support this conclusion. Apte's conversation was with Finn. There is no evidence in the record that such a statement was ever communicated to the Union members. Further, the conversation referred to just one job, the construction project at the University of Miami. This could not be considered a statement of policy. Neither Finn nor any other witness testified that Apte had ever said that the electricians would always refuse to work with the Dade Sound men.

Reading on, we find on Page 17, reference to "petitioner's policy not to work with members of CWA, as laid down by its officers..." and on the next line, "This policy of the Union...". On Page 19, the Board, without the slightest regard for the status of the record, states: "Apte made it clear that it considered the performance of sound work by members of the CWA as an encroachment upon its jurisdiction and that its members were going to strike on any project on which the members of the CWA were engaging in such work..." The record simply does not justify such a conclusion. On Page 27, although the Board does not use the term "policy", it is clear that they give the action described

there the same meaning. And so we find "...the acts and statements of the job stewards here involved were in accord with the statements of the Union's business agent, Apte, that if the rival Union, CWA, to which Dade's employees belong, did not remove its members from a job claimed to be under the Union's jurisdiction, Union members "would be walking'".

The General Counsel's erroneous assumption that Apte's statement to Finn was a statement of Union policy is further compounded by his mistaken assertion, devoid of substantiation by the record, that the employees involved in the incidents, which are the subject matter of the instant case, knew of the statements, and that these members were carrying out Union policy. So on page 29, where the Board again refers to Union policy, its brief says: "...whereas here they presented forcefully the Union's policy to the several employers...." On page 34, the Board again begs the question where it says: "Where Union policy is well established with respect to the dispute, which precipitated the stoppage...", assigning those facts to the instant case. On page 34 again we find such reference—"...further strikes in pursuance of such policy...." On page 35 we find further description of the events which lead to the conclusion that the Board again assumes that a policy existed even though it does not use the term. "...members on the other construction sites had set an example to the members of the Pan American Hospital site by going out on strike." On page 36, at the top, and in its note, Number 15, the Board again assumes, without documentation, that the policy existed. It is submitted that the Board cannot establish "policy" by repeated use of the term. It is further submitted that nothing more is present.

Strangely enough, the Board in its Order did not determine that such a "policy" as is described in its Brief,



existed. Actually, what the General Counsel is attempting to do is to enforce the Trial Examiner's recommended order, despite the fact that the Board expressly rejected the reasoning of the Trial Examiner and set forth their grounds independently in the Decision (JA 67). And so we note in the Brief of the General Counsel many evidentiary matters discussed which would be appropriate to support the Trial Examiner's findings but which are improper in attempting to support the Board decision. As an example, on page 6 of the Brief, we discover the writer relying on the testimony of witnesses who testified concerning the statements of Logan, a member of the Union, not a steward, but a job foreman. The description of Logan's statements are reported as though these are the first person, first hand statements of the speaker. However, an examination of the record indicates that these are reported conversations of the speaker, and under these circumstances, hearsay. The Board's opinion did not refer to Logan, other members or other foremen. However, because of apparent weakness in the case, the General Counsel feels constrained to buttress his arguments with material, which the Board did not consider. We pointed, in our main brief, to the fact that the Trial Examiner considered the statements of Logan, (JA 11, 12, 37) and other members of the Union, who were not agents. (JA 11-15, Browning; JA 27, 39 Laschower; JA 20-26, 44, 45, 47, 49-50, Harrison; and Taylor, 39-40, 50). But the Board rejected the Trial Examiner's theory of the case and his use of the evidence presented to him, and relied, with one exception, solely on that evidence which it could properly consider, excluding statements attributed to Logan, and such other incompetent testimony. And we maintain it is improper for the General Counsel to go beyond the Board's decision and rely on material rejected, or at least not considered, by the Board. So in the case of **Sales Drivers, Helpers, etc. v. NLRB**, 229 F 2d 514, 517 (CA-

DC; 1955) (Campbell Coal). This court indicated that in seeking enforcement for its Order, or on cross-petition for its enforcement, the Board cannot rely upon theory of the case which it did not make a part of its Order.

The Board is required to set forth their considerations which formed the basis for its order. **Phelps Dodge Corp. v. NLRB**, 313 U.S. 177, 197, 61 S.Ct. 847, 853, L. Ed. 1271; **NLRB v. Don Juan Co., Inc.**, 185 F 2d 393 (CA 1950). It must be assumed that the Board has so acted and detailed such factors completely, and anything omitted would not substantially affect the result.

Frequent employment of such tainted supporting material is observed. And so we find on pages 6, 7, and 8, where the General Counsel discussed the Miami Laundry Job, the General Counsel refers to statements attributed to Dias. However, the Board did not rely on any testimony concerning Dias., (JA 71) but only the statements made by Disney in finding illegality at the job site. Similarly, we find on page 8 a reference to one Fonda, an electrician, whose arrival at the job site was described by one of the General Counsel's witnesses at the hearing. The Trial Examiner erroneously assumed that Fonda's arrival could be a factor from which an inference could be drawn that the Union knew about this dispute, and that this problem would arise, and sending its own sound men to the job so that when the non-Union company was evicted from the job, Union members would be present to perform the work. This conclusion by the Trial Examiner was erroneous and was not based on sound logical reasoning, nor on any fact in the record from which it could legitimately be drawn. In addition, in excepting to the Trial Examiner's report (JA 61, Exception 31), petitioner relied on one of the General Counsel's exhibits, the payroll record of O'Donnovan, for the period includ-

ing the date of incident. These records, General Counsel's Exhibit 3, have been added to the Joint Appendix and are found at JA 91-92. They establish without doubt that Fonda was not on O'Donnovan's payroll at this time. The Board rejected the inferences drawn by the Trial Examiner in this respect, and when it discussed the events at the Miami Laundry Job, it ignored any reference to Fonda.

On page 9 we find the General Counsel relying on the testimony of Browning, evidence which was not relied on by the Board in arriving at its decision. On page 10 we find the General Counsel relying on the testimony of Sullivan, another witness whose testimony was not entertained by the Board. This was a striking example of the Trial Examiner's refusal to follow sound principles of law, for in accepting Sullivan's testimony the Trial Examiner disregarded the hearsay rule and ignored the forceful attack on Sullivan's credibility by showing that his evidence on a critical issue before the Trial Examiner was significantly contrary to his testimony at a hearing in the District Court (JA 24-30). The Board refused to consider Sullivan's testimony, but does not favor us with its rationale. Our point is that the General Counsel felt that he was compelled to rely on such testimony to support his position even though the Board did not feel such compulsion.

In discussing the Pan Am job, the General Counsel endeavors to assess responsibility based on Union "policy" and employs the statements attributed to Harrison and Taylor as evidence which establishes this policy or an implementation of the policy. Statements attributed to these Union members, not agents, do not bind the Union. *Longshoremen Local 418 (Lykes Bros. Steamship Co.)*, 102 NLRB 720, (1953); *Barker's East Main Corp., Inc.* 136 NLRB, 494 (1962). And so on page 10 and 11 of the General Counsel's brief

are found references to the statements of Taylor and Harrison, in an effort to establish Union liability—statements which emanated from individuals who were neither stewards, business agents or employees of the union. On page 22 again, the General Counsel is forced to rely on the testimony of witnesses who repeat statements of foremen, members of the Union, again not agents of the Union, and who are not found by the Board to be agents of the Union. This is in reference to the report of Logan's testimony. On page 33 and 34, again we find the General Counsel relying on the testimony by Sullivan; repeating alleged statements that Harrison, the job foreman, had made to him. This testimony of Sullivan, as stated before, is not a part of the Board's Order.

With the exception of one or two cases which we shall discuss hereafter, the decisions relied on by the General Counsel in its Brief turned mainly upon the existence of a policy that was specific and concrete, and the provisions of which were outlined or detailed, for the most part, in a written document. And so we find in those cases, 'hot cargo' clauses in collective bargaining agreements between the Unions and employers, provisions in By-Laws or Constitutions of labor unions, formal actions taken at Union meetings, recorded in the minutes of such meetings, or clear, general expressions of policies made by the Executive Board or business agents of the labor union. Such expressions intended to commit the Union to a definite course of action over indefinite periods of time. This is clearly not the instant case. This is especially so with respect to the two cases relied upon primarily by the Board as authority for assessing Union responsibility on the Pan American job. **Local 3, International Brotherhood of Electrical Workers, 140 NLRB 729, enforced 325 F 2d 561. (CA-2, 1963) and Local 3 IBEW (Western Electric Company, Inc.) 141 NLRB**

888 (1963). The abundance of independent evidence in both of those cases, additionally established, or at least supported the Board's finding that the Union induced or encouraged the employees not to work or handle goods and materials.

A case cited by the General Counsel, decided by an appellate court, which approximates the instant one, is **NLRB v. Breweries & Beer Distributive Drivers**, 281 F 2d 319. (CA-3; 1960). There the Union had a dispute with a beer distributor. At five separate installations, stewards for the Union informed employees of neutral employers that the struck employer could not get his deliveries unless he had signed up. At least this occurred at three installations; at the other two it was not established that the statements were made by stewards. These conversations led to refusal to handle merchandise or to work. The Court refused to enforce the Board's award at those places where Union agency had not been established. (Compare this to the instant case). While the Board and the Court found that the stewards were acting within the scope of their authority, it was established first that a Union policy existed, and that the stewards were acting in accord with such Union policy. In addition, the cases were distinguishable on this very significant basis. The stewards there approached neutral **employees**. In the instant case, no contact with employees is shown. Different standards exist, vis-a-vis the responsive action of employees when confronted with their business agent (independent of what the business agent says or implies) and the reactions of an employer under the same circumstances. Unless he goes to the greatest of pains to establish their (the employees) right to exercise or not to exercise their prerogatives, any message concerning a non-Union condition is likely to lead to work stoppages. However, the same description of the circumstances to an em-



ployer need not necessarily cause a conclusion that a work stoppage is bound to follow.

In further comparison of the cases, the vital effort of the steward to separate his individual reactions from his union authority were made known to the employer in the instant case while there was no such effort on the part of this steward in the cases described above. Similarly, with **NLRB v. United Brotherhood of United Carpenters**, 205 F 2d 515. (CA-10, 1953) (Union steward had a fight with employee and told other employees that they could not work on a construction job unless they belonged to the union.) Again, in **NLRB v. Local 815 IBT**, 290 F 2d 99, (CA-2, 1961) a violation was predicated on repeated indications that the union steward acted for, and in behalf of, and in furtherance of official union position expressed both by the business agent verbally and in letter form. Further, the steward never attempted to take off his union hat and replace it with the headgear of an individual.

All the other cases cited by Respondent in its brief are distinguishable from the instant case, generally based on a clearly defined, established, documented union policy not to work with non-union employees or admonishing union members to take action to prevent erosion of union jurisdiction claims, or in furtherance or implementation of 'hot cargo' clauses either in contracts or in by-laws or constitutions.

The Petitioner takes exception to the challenge raised by the Respondent in certain cases cited in the Petitioner's brief. The first of these is the application of **P. R. Mallory (N.L.R.B. v. P. R. Mallory and Company**, 237 F 2d 437, (CA-7, 1956), to the instant case. P. R. Mallory stands for the general proposition that union stewards, although they

are stewards, while engaged in their normal activities at the plant, shop or job site, can retain their individuality and may drop the badge of formal leadership. In *P. R. Mallory* the stewards acted collectively with the other employees and submerged the stewards' authority to the whim and will of all of the other employees. But they did participate together with the employees, although it was their individual action within their group and not a steward's action as leader of the group. And the fact that the stewards continued to serve at the will of the employees working with them, cannot be conclusive, for if this were the sole factor considerable, a steward who had been appointed and served subject to the discretion and control of the union, could never act on an individual basis, and this, of course, is contrary to existing law. We refer not only to the cases cited in our brief, in support of this contention, but those cited in Respondent's brief, where appellate bodies acknowledged the existence of such principles. See *NLRB v. International Brotherhood of Boiler Makers*, 321 F 2d 807, 810. (CA-8; 1963).

The test should be whether or not, under the circumstances, the persons dealing with the steward (and in this case, they are all employers) should have, as reasonable men, believed that the stewards were acting as individuals or for the Union.

A distinction between *Mallory* and the instant case drawn by the General Counsel on page 29 of its brief, that the stewards there made no demands upon management, whereas here they had presented forcefully the policy to several employers is hollow where it is recalled that the stewards there were in among of group of employees and when considered in the light of the fact that the stewards

would generally have greater control of the employees than they would have ability to frighten management.

As to the case of **Building and Construction Trades of Tampa (Tampa Sand Co.)** 132 NLRB 1516, 1569, both Petitioner and Respondent have set forth their views as to the impact of the case and conclusions emanating therefrom. Petitioner submits that the General Counsel has failed to reply effectively to the arguments based on **Tampa Sand**.

With respect to **Kaiser Aluminum and Chemical Corp.** 104 NLRB 873, Petitioner's argument has apparently evaded Respondent. Petitioner's position is that, that case stands for the proposition that while employees may be responsible on an individual basis for the work stoppage, the fact that concerted activities have been engaged in does not convey responsibility for those actions to the union, unless the union has induced these concerted activities. Its relevancy is applicable to the Pan Am job.

The Petitioner and Respondent are in disagreement over the interpretation of the Board's action in **Local 657, International Brotherhood of Teamsters**, 115 NLRB 981, 998 999. Only a reading of the Trial Examiner's report and the Board's decision can resolve the differences in interpretation. Petitioners repeat their contention that on the controverted issue, the Trial Examiner was not overruled by the Board; that the Board's ruling is based on the "background of direct evidence inducement and encouragement of prescribed activity, as found above," that the union induced and encouraged the conduct engaged in by the employees. But on the very narrow question of whether or not the contemporaneous action (work stoppages) of several small groups of union members alone would serve to indicate or serve as evidence from which an inference of illegal union

activity could be drawn, the Board did not overrule the Trial Examiner.

The General Counsel in its brief assumed a union policy directed at preventing Dade Sound men from working in its jurisdiction and argued that this policy and the example of union agents in causing work stoppages at other job sites induced and encouraged the employees at Pan Am to engage in a work stoppage. The Board in its order also indicated that the Union had by these examples induced and encouraged the work stoppages at the Pan Am job. This argument is threadbare when examined in the light of the following two considerations.

1. The record indicates that there were times when no incidents occurred while members of the union worked with Dade Sound employees (JA 114-115, International Flight Caterers' job; JA 136, working with other electrical contractors; JA 149, North Dade Motors job.) While admitting that this is not the strongest type of argument, still for this purpose, it has some meaning.

The other point from which this matter should be examined is the fact that there is no evidence that the previous incidents became known to the employees at the Pan Am job. As a matter of fact, a very pertinent question is: "How could they become known?" Apparently, the union business agent, or business agents, were not always informed of them. (Albury did not consider the stoppage of work by one employee as significant, (JA 182) (he knew of only one). In the other instances no work stoppage had occurred. Why should these events receive any publicity? Consider further that Dade County had over a million residents at that time and covered an area of approximately 1500 square miles. Why should one examining these facts

assume that employees working in one part of the country learned of an incident in another part of the country? The record does not reflect that these construction job sites were contiguous or even close to each other. In this light, it must not be concluded that any example was set for the employees on the Pan Am job.

One further point is left for disposition. The Board, in its brief, has failed to reply to the argument that the posting of the notices, as required by the settlement agreement and the Court Decree, in case No. 12-CC-223, are statements of Union policy. However, although having failed to reply, the Board continues to press its point that the acts of the union in that case, are indicative of a continuing policy, coloring, instigating and controlling the acts of union members on the job sites in question. To elaborate on this point we feel it necessary to point out that the posting of the notices are designed to effectuate the purposes of the act. **J. J. Haggerty, Inc., Nassau County Contractors Association, Inc. and Local 138, International Union of Operating Engineers, AFL-CIO, et al**, 139 NLRB, No. 40. And the remedy is programmed according to the number of violations, the frequency of their repetition, the quality or the character of the refusal to comply, and the steps thought needed to cure past infractions and eliminate future violations. The purposes of the Act are insured, as noted above, when future violations have been curtailed or eliminated. The notice is required to help effectuate these purposes and to notify the persons affected, including union members, wherever they may be, and others who are interested parties now or in the future, that the respondent, whether employer or union, will not violate the act in the future. And it is further designed to reach all those who could be affected at all the places where such effect may, or probably will result. **Murray Golub, et al, d/b/a Golub Brothers, et al**, 140 NLRB



No. 16, (1962), **Great Atlantic and Pacific Tea Co., Inc.** 141 NLRB No. 5 And this is a statement of union policy whether it is voluntarily promulgated and publicized by the union, without the filing of a charge, whether it is part of a settlement agreement entered into by the union, the General Counsel, and approved by the Board, or whether it is pursuant to Court ordered enforcement of a Board order requiring the posting of notices. It must be assumed that the order, tailored to supply the remedy, accomplished the purposes intended by the Board and that all of the members of the Union, who might be affected by the unfair labor practices committed by the Union, were notified and did learn of the new Union policy, and that which the Union would, or would not require of them in the future. In the absence of a showing of an effective action by the Union to discourage or destroy the effects of the notice, it must be assumed that this was the only policy publicized among the members and the only policy to which they were bound to adhere.

### CONCLUSION

For all of the reasons stated above, the Petitioner submits that the Petition be granted and the Board's order be modified accordingly.

Respectfully Submitted,

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By \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Reply Brief for Petitioner has been furnished by mail, this -- day of August, 1965, to:

National Labor Relations Board  
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